United States Court of Appeals for the Second Circuit



APPENDIX

ORIGINAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-714()

RALPH METZGER, JR., ADELE METZGER, and RALPH METZGER, III, an infant under 14 by his parent, Ralph Metzger, Jr.

Plaintiffs-Appellants,

-against-

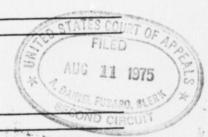
THE ITALIAN LINE,

Defendant-Appellee.

P/5

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

JOINT APPENDIX



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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	х	
RALPH METZGER, JR., ADELE METZGER and RALPH METZGER III, an infant	:	
under 14, by his parent, Ralph	:	
Metzger, Jr.,	:	70 CIV. 5629 (R.O.)
Plaintiffs,		
	:	DOCKET ENTRIES
-against-	:	DOORET BRITADE
THE ITALIAN LINE		
	:	
Defendant.		
	x	
	^	

Date	Proceedings
Dec. 22, 1970 Feb. 11, 1971	Filed complaint & issued summons Filed summons with marshal's ret. Served The Italian Line by L. Reda on 1-20-71
Feb. 22, 1971	Filed Interrogatories addressed to Plaintiff
Feb. 22, 1971 Feb. 22, 1971 May 8, 1973	Filed Answer to Complaint Filed Notice of taking Deposition Filed Pltffs. answers to defts. Interrogatories.
Jan. 22, 1974 Oct. 22, 1974	Mailed notice of reassignment Filed deft's affdvt. & notice of motion for Summary Judgment-Ret. 11-1-74.
Oct. 22, 1974	Filed deposition of Ralph Metzger, et al. Mailed notices.
Oct. 22, 1974 Oct. 22, 1974	Filed deft's 9 (g) statement. Filed deft's memorandum of law in support of motion for summary judgment.
Nov. 13, 1974	Filed pltffs' affdvt. in opposition to deft's motion for summary judgment.
Nov. 13, 1974	Filed pltffs' 9 (g) statement in opposition to motion for summary judgment.
Nov. 13, 1974	Filed pltffs' memorandum of law in opposition to motion for summary judgment.

Docket Entries

Date	Proceedings
Nov. 27, 1974	Filed deft's supplemental reply affdvt.
Jan. 24, 1975	Filed Opinion #41798. Ordered Defts. motion for summary judg- ment in its favor is granted. So Ordered OwenJ. (mailed notice)
Jan. 30, 1975	Filed Judgment in favor of deft. against pltffs. dismissing action. Clerk
Feb. 21, 1975	Filed pltffs' notice of appeal from order granting summary judgment. Mailed copies to Kirlin, Campbell & Keating.
Apr. 10, 1975	Filed letter of Kirlin, Campbell & Keating to Judge Owendated 1-7-75 re Notary's signature.
Apr. 10, 1975	Filed letter dated Dec. 4-74 of Kirlin to Judge Owenre Notary's signature.
Apr. 10, 1975	Filed letter dated Nov. 8-74 to Owen, J. from Kirlin re: notary.

UNITED STATES DISTRICT COURT COUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant under the age of 14, by his parent, Ralph Metzger, Jr.,

70 CIV. 5529

COMPLAINT

Plaintiffs

PLAINTIFFS DE-

: MAND TRIAL BY JURY

•

THE ITALIAN LINE,

-against-

Defendant.

...

-X

:

Plaintiffs, by their attorney, Herbert Kaplow, complaining of the defendant herein, for their complaint respectfully allege:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RALPH METZGER, JR.

- 1. That the plaintiffs were at all times hereinafter mentioned and still are citizens of the State of New
 Jersey and reside at 17 Vincent Drive, Clifton, New Jersey.
- 2. That the plaintiff, RALPH METZGER, JR. and the plaintiff, ADELE METZGER, are husband and wife and are the parents of RALPH METZGER, III.
- 3. That the defendant was and still is a foreign business entity organized and existing under and by virtue of the laws of the sovereign nation of Italy.
- 4. That at all times hereinafter mentioned, the defendant owned a vessel known as the S. S. LEONARDO DA VINCI.

- 5. That at all times hereinafter mentioned, the defendant operated a vessel known as the S.S. LEONARDO DA VINCI.
- 6. That at all times hereinafter mentioned, the defendant controlled a vessel known as the S. S. LEONARDO DA VINCI.
- 7. Upon information and belief, at all times hereinafter mentioned, the defendant, by its agents, servants and/or employees, managed, operated and controlled the aforesaid vessel.
- 8. Upon information and belief, at all times hereinafter mentioned, the defendant equipped, manned and provisioned the aforesaid vessel.
- 9. Upon information and belief, that on and during all the times hereinafter mentioned, the defendant reserved unto itself the supervision, direction and control of the officers and members of the crew of the aforesaid vessel.
- of the subject matter of this action by reason of the fact that it is predicated upon a diversity of citizenship and upon a maritime tort and is an action for an amount in excess of \$10,000., exclusive of interest and

costs. That the defendant's principal place of business is not within the State of New York.

- 11. That at all times hereinafter mentioned, the plaintiff was a passenger and had duly paid for accommodations aboard the S.S. LEONARDO DA VINCI, and the consideration therefor had been received by the defendant.
- 12. That on or about December 30, 1969 while the vessel was at the port of Montego Bay, Jamaica, the plaintiff was injured in a multiple vehicle automobile accident while on a shore excursion associated with and connected with the vessel.
- 13. That the said occurrence and the injuries resulting to the plaintiff were caused solely by reason of the negligence of the defendant without any negligence on the part of plaintiff contributing thereto.
- 14. That the defendant was negligent in failing to have adequate and proper supervision at the port of Montego Bay, Jamaica at the time of plaintiff's accident; in failing to have competent employees prior to disembarkation by passengers; in failing to have competent employees during disembarkation by passengers for shoreside excursions and permitting passengers to disembark into hazardous, unknown and dangerous conditions, all of which were or should have

been known to the defendant; in failing to provide the usual, customary and adequate warnings concerning the known dangers in tourist ports in connection with shore excursions associated with and connected with the voyage of the vessel; in failing to provide the plaintiff with adequate information concerning the hazards to be encountered ashore on shore-side excursions connected with the vessel; in failing to provide the plaintiff with a safe and seaworthy vessel; in failing to warn the passengers, including the plaintiff, of the aforesaid dangerous conditions and the defendant was otherwise negligent and the vessel unseaworthy.

- the plaintiff was severely and seriously injured, bruised and wounded; suffered, still suffers and upon information and belief, will continue to suffer great physical and mental pain and great bodily injuries and became sick, sore, lame and disabled and so remains, and upon information and belief, is permanently injured and is otherwise injured.
- obliged to and did obtain medical aid, attention and medicines in an endeavor to cure or alleviate his injuries and he is still obliged to incur obligations for medical aid

and attention.

- 17. That by reason of the premises, plaintiff has been incapacitated from attending to his usual dubies. or vocation, resulting in his suffering a loss of earnings thereby.
- 18. That the doctrine of comparative negligence of the plaintiff applies to this action, although any negligence on the part of the plaintiff is denied.
- 19. That by reason of the premises, the plaintiff has been damaged in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, ADELE METZGER

- 20. The plaintiff, ADELE METZGER, repeats and realleges each and every allegation contained in paragraphs one through nineteen of this complaint.
- 21. That by reason of the premises, plaintiff was severely and seriously injured, bruised and wounded; suffered, still suffers and, upon information and belief, will continue to suffer great physical and mental pain and great bodily injuries and became sick, sore, lame and disabled and so remains, and, upon information and belief, is permanently injuried and is otherwise injured.

- 22. That by reason of the premises, plaintiff was obliged to and did obtain medical aid, attention and medicines in an endeavor to cure or alleviate her injuries and she is still obliged to incur obligations for medical aid and attention.
- 23. That by reason of the premises, plaintiff has been incapacitated from attending to her usual duties or vocation, resulting in her suffering a loss of earnings thereby.
- 24. That by reason of the foregoing, the plaintiff, ADELE METZGER, has been damaged in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RALPH METZGER, III BY RALPH METZGER, JR.

- 25. The plaintiff, RALPH METZGER III repeats and realleges each and every allegation contained in paragraphs one through nineteen of this complaint.
- 26. That by reason of the premises, plaintiff was severely and seriously injured, bruised and wounded; suffered, still suffers and, upon information and belief, will continue to suffer great physical and mental pain and great bodily injuries and became sick, sore, lame and disabled and so remains and, upon information and belief, is perma-

nently injured and is otherwise injured.

- 27. That by reason of the premises, plaintiff was obliged to and did obtain medical aid, attention and medicines in an endeavor to cure or alleviate his injuries and he is still obliged to incur obligations for medical aid and attention.
- 28. That by reason of the premises, plaintiff has been incapacitated from attending to hisusual duties or vocation,
- 29. That by reason of the foregoing, the plaintiff, RALPH METZGER III has been damaged in the sum of TWO HUNDRED THOUSAND (\$200,000) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RALPH METZGER, JR.

- 30. The plaintiff, RALPH METZGER JR. repeats and realleges each and every allegation contained in paragraphs one through nineteen of this complaint.
- 31. That at all times hereinafter mentioned, the plaintiffs, RALPH METZGER JR. and ADELE METZGER were husband and wife and lived together and the said RALPH METZGER JR. supported and maintained his wife, ADELE METZGER.
- 32. That by reason of the defendant's negligence as aforesaid with the resultant injuries to the plaintiff, ADELE METZGER, the plaintiff, RALPH METZGER JR. did become

liable for and did necessarily pay for medical services, aid and attendance and had expenses in connection therewith and that he continues to have such expenses and will have such expenses in the future.

- 33. That by reason of the negligence of the defendant as aforesaid, the plaintiff, RALPH METZGER J was deprived of the services of his wife, ADELE METZGER, and suffered damage thereby.
- 34. That all of the damages sustained and to be sustained by the plaintiff, RALPH METZGER JR. were and are due to the fault of the defendant, its agents, servants and/or employees.
- 35. That by reason of the foregoing, the plaintiff, RALPH METZGER JR. has been damaged in the sum of FIFTY THOUSAND (\$50,000) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF, RALPH METZGER JR.

- 36. The plaintiff, RALPH METZGER JR. repeats and realleges each and every allegation contained in paragraphs one through nineteen of this complaint.
- 37. That at all times hereinafter mentioned the plaintiffs RALPH METZGER JR. and RALPH METZGER III were father and son and lived together and the said RALPH METZGER JR. supported and maintained his son, RALPH METZGER III.

- as aforesaid with the resultant injuries to the plaintiff, RALPH METZGER III, the plaintiff, RALPH METZGER JR. did become liable for and did necessarily pay for medical services, aid and attendance and have expenses in connection therewith and that he continues to have such expenses and will have such expenses in the future.
- 39. That by reason of the negligence of the defendant as aforesaid, the plaintiff, RALPH METZGER JR. was deprived of the services of his son, RALPH METZGER III and suffered damage thereby.
- 40. That all of the damages sustained and to be sustained by the plaintiff RALPH METZGER JR. were and are due to the fault of the defendant, its agents, servants and/or employees.
- 41. That by reason of the foregoing, the plaintiff, RALPH METZGER JR. has been damaged in the sum of FIFTY THOUSAND (\$50,000) DOLLARS.

wherefore, the plaintiff, RALPH METZGER JR. demands judgment in the sum of SEVENTY FIVE THOUSAND (\$75,000) DOLLARS, together with the costs and disbursements of this action; the plaintiff, ADELE METZGER demands judgment in the sum of TWO HUNDRED FIFT THOUSAND (\$250,000) DOLLARS, together with the costs and disbursements of this action;

the plaintiff, RALPH METZGER III demands judgment in the sum of TWO HUNDRED THOUSAND (\$200,000) DOLLARS, together with the costs and disbursements of this action; the plaintiff, RALPH METZGER JR. demands judgment in the sum of FIFTY THOUSAND (\$50,000) DOLLARS, together with the costs and disbursements of this action and the plaintiff, RALPH METZGER JR. demands judgment in the sum of FIFTY THOUSAND (\$50,000) DOLLARS, together with the costs and disbursements of this action.

HERBERT J. KAPLOW Attorney for Plaintiffs Office and P.O. Address 170 Broadway New York, New York 10038 962-4736 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER III, an infant under 14, by his parent, Ralph

Metzger, Jr.,

ANSWER

Plaintiffs

-against-

70 CIV. 5629

THE ITALIAN LINE

Defendant.

X

Defendant, ITALIAN LINE, also known as "ITALIA"SOCIETA PER AZIONI DI NAVIGAZIONE-GENOA, sued herein as
THE ITALIAN LINE, answering the complaint by its attorneys, Kirlin, Campbell & Keating alleges upon information and belief as follows:

AS TO THE FIRST CAUSE OF ACTION

- 1. It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each
 and every allegation contained in paragraphs numbered 1 and
 2 of the complaint.
- 2. It denies each and every allegation contained in paragraphs numbered 12, 13, 14, 15, 16, 17, 18, and 19 of the complaint.
- 3. It denies each and every allegation contained in paragraph numbered 10 of the complaint except that it ad-

mits there is an apparent diversity of citizenship in this action, that the action is for an amount in excess of \$10,000. and that defendant's principal place of business is not within the State of New York.

4. It denies each and every allegation contained in paragraphs numbered 11 of the complaint except that it admits that at some of the times mentioned in the complaint plaintiff was a passenger and had paid for accommodations on board the SS LEONARDO DA VINCI, which payment was received by defendant.

AS TO THE SECOND CAUSE OF ACTION

- 5. It repeats and realleges each and every answer and denial to the allegations referred to in paragraph numbered 20 of the complaint.
- 6. It denies each and every allegation contained in paragraphs numbered 21, 22, 23, and 24 of the complaint.

AS TO THE THIRD CAUSE OF ACTION

- 7. It repeats and realleges each and every answer and denial to the allegations referred to in paragraph numbered 25 of the complaint.
- 8. It denies each and every allegation contained in paragraphs numbered 26, 27, 28 and 29 of the complaint.

AS TO THE FOURTH CAUSE OF ACTION

- 9. It repeats and realleges each and every answer and denial to the allegations referred to in paragraph numbered 30 of the complaint.
- 10. It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered 31 of the complaint.
- 11. It denies each and every allegation contained in paragraphs numbered 32, 33, 34 and 35 of the complaint.

AS TO THE FIFTH CAUSE OF ACTION

- 12. It repeats and realleges each and every answer and denial to the allegations referred to in paragraph numbered 36 of the complaint.
- 13. It denies that it has any knowledge or information thereof, sufficient to form a belief, as to each and every allegation contained in paragraph numbered 37 of the complaint.
- 14. It denies each and every allegation contained in paragraphs numbered 38, 39, 40 and 41 of the complaint.

AS A FIRST DEFENSE

15. The injuries and/or illnesses to the plaintiff, if any, arose out of certain risks, dangers and hazards, all of which were open, obvious and well-known to the plaintiff at and before the said injuries and/or illnesses were sustained and all of said risks, dangers and hazards had been assumed by plaintiff.

AS A SECOND DEFENSE

and/or illnesses as alleged in the complaint, said injuries and/or illnesses were caused in whole or in part by plaintiff's own negligence and were not caused or contributed to in any manner by any negligence of this defendant.

AS A THIRD DEFENSE

- 17. The plaintiffs were on board the SS LEONARDO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof, which contains a provision numbered "13".
- 18. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS A FOURTH DEFENSE

- 19. The plaintiffs were on board the SS LECNARDO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "17".
- 20. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS A FIFTH DEFENSE

- 21. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "19".
- 22. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS A SIXTH DEFENSE

23. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "29".

24. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

. AS A SEVENTH DEFENSE

- 25. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "30".
- 26. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS AN EIGHTH DEFENSE

- 27. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "32".
- 28. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS A NINTH DEFENSE

29. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between them-

selves and the defendant, a copy of which is attached hereto and made a part hereof which contains a provision numbered "34".

30. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

AS A TENTH DEFENSE

- 31. The plaintiffs were on board the SS LEONAR-DO DA VINCI by reason of a ticket contract between themselves and the defendant, a copy of which is attached hereto and made a part hereof.
- 32. By reason of the foregoing, the plaintiffs may not recover against the defendant, and the complaint should be dismissed.

wherefore, the defendant demands that the complaint be dismissed with costs to the defendant as against the plaintiffs and that the Court grant to the defendant such other, further and different relief as the justice of the cause may require.

Dated: New York, New York February 19, 1971

KIRLIN, CAMPBELL & KEATING

To: HERBERT J. KAPLOW, ESQ.
Attorney for Plaintiffs
Office & P.O. Address
170 Broadway
New York, N.Y. 10038

By Thomas Coyne

A Member of the Firm
Attorneys for Defendant
Office & P.O. Address
120 Broadway
New York, N.Y. 10005
(212) 732-5520

Italia

SOCIETÀ DI NAVIGAZIONE -

Italian Line

BIGLIETTO DI PASSAGGIO PASSAGE CONTRACT BOLETO PASSAGEM BILHETE DE

No 390520

PATTI E CONDIZIONI - Art 1 Validità - Il nessente contratto di passaggio è valido sonanto per la persona o le parsone cui e intestato e per la nave, la sistemazione e la partenza in esso ind.cate

TERMS AND CONDITIONS - 1 — Validity - This passage contral is valid only to the person of partners named and for the vessel accommodation and salling date herein indicated and a not transferable,

in Mily je

Art. ? - Intestatario del biglietto e suo agente. - Qualora il presente contratto non sia stipuisto e o sottoscritto personalmente dal passeggero cui e intestato. Si conviene che la persona che lo stipula e o lo sottoscrive sara considerata a tutti gli efietti come l'Agente pienamente autorizzato dal passeggero ticilare del contratto, e per tanto tutte le condizioni qui indicate obbligheranno il passeggero come se egli stesso le avesse personalmente stipu

Art) - Custodia del biglietto - li passeggero e tonuto a custodire diligentemente il presente co. ratio giustificare il proprio diritto al viaggio e ad esibirio a qualsiasi ufficiale della nave o funzionario della Socii inte puene facesse richiesta

Art 4 - Prezzo di passaggio. - il prezzo indicaso nei presente contratto e quello della tariffa in vigore alla di ACI - Prezzo di passaggio. Il prezzo indicato nei presente contratto e quello della tariffa in vigore alla data onici stesso. La Società il facoltà di aumentare le tariffe prima della partenza, sia per il viaggio madata che per quello di risterio, nei quali caso il passaggero oomi, prima dell'imbarco, pagare la differenza oppure il diretto oi risolvere il contratto e ottenere, il rimborso di prezzo relativo al passaggio non usufrutto, decurrati diretto vigore di aggrata. Nei prezzo indicato nei pretente contratto e compresa la somministrazione del 10.3 a bordo, in conformita al Regolamento della Societa, fino all'arrivo della nave al porto di destinazione del passeggero.

Art. 5 - Tasse e diretti. - Sono a carico del pauseggero tutte le sijese, tasse e diretti d'imparco e sbarco, bolio, ecc. Art. 6 — Mancata partenza. - il passeggero che non si presenta in tempo utile alla partanza o che comunque non prenda imbarco, non ha diretto al rimborso, neppure parziale, del prezzo pagato e deve anti completare il pagamento del nolo se non il avesse pagato per intero

Art. 7 — Rinuncia alla pa-tenza. - Quaiora il passeggoro, prima divia partenza della nave, intenda rinunciare al passaggio, ogli potra accordara con la Società affinche questa metta in vendita la sistemazione indicata nel presente contractio. Se la vendrita serà luogo, sare sestitutto al gaussigneri di persona la sissenzazioni empicaria me predente dei 10½, spettante alla Societa in tal caso, il rimborio sara effettuato nello stesso luogo e nella stessa moneta in cu-

il bezzettie in acometato Art 8 — Assegnazioni poeti. - La Società ha facoltà di destinare al passeggero pusti divera da quelli che fossero nati fasati, purche di prezzo eguste. Qualora, per modificazioni o diversa destinazione dei tocchi a Bordo, venisse a variari la assazione dei poeti assegnati ila Società avrari facolta di riprolevra il presene contra rimborsande al passeggero il prazzo pagato per il passeggio non fruito e il passeggioro non poeta prazioneggio all'una indennita.

Art 9 — Anticipo, ritardi di partenza e di arrivi, soppressione di partenza, modifiche di itinararia

2 - Nominee of theset and his Agent. - If the present passage contract is not stipulated and or signed per 7 — Nominee of taking and his Agent. If the present passage contract is not supulsed and or uprice personally by the passage in whose name abpears in the ricket, it is intuitially understood and expressly agreed that the person who supulsed this contract and or specific and the passager named herein and all the terms and this contract shall be binding on the passager named herein and all the terms and will discussed this contract shall be binding to the observed or passagers with the same force and effect is if the inventor or passagers had personally stipulated and signed it 3.— Custody of the ticket. The inventor passage contract must be carefully seet by the passager to justify the life to the rup and must be enhabled to any of the vessel is officers or officials of the Company when requested.

One to the trip and must be exhibited to any or the vesse's oniciars or onicials of the Company when requested.

"It tages fairs. The passage fair appearing in this contract is that of the saff in logice at the date of
the Company reserves things to increase the tariffs before the saling of the vessel for the outward
to a homeward voyage and this passager in such case must pay the difference before embarkance, or shall
"ight to cancel the contract and have the amount paid for the unused passage refunded, less commissions." The are shown in this passage contract includes the furnishing on board of food as provided by the

of the Company to the port of destination of the passenger.

5 — Taxes and charges. - All expenses, taxes, embarkston and landing charges, stamps, etc., shall be borne

— Failure of the passanger to sail. - The passanger who does not timely present himcelf for the sailing, or for any reason does not ombark, a not entitled to any related of the passage money paid or any part thereof, and in the event that the fair has not previously been paid in full he must complete the payment.
? Timely cancellation of passage. - If prior to the sailing of the vessal the passager intends to cancel the passage contract, the Company shall, it has request, engagearour to sell the accommodation indicated into soft the company will refund to the passager the amount paid by him or his agent less 10 %, cancellation charges acroning to the Company such refund, if any, shall be made by him or his agent less 10 %, cancellation charges acroning to the Company such refund, if any, shall be made by the Company with the Country where and in the currency with which this passage was paid.
8 — Assiç went of accommodations. - The Company reserves the right to saign accommodations other than those previously assigned to the passager provided they are of the same value. If by alteration or Additional control of the passager provided they are of the same value. If by alteration or Additional control of the passager provided they are of the same value. If by alteration or Additional control of the passager provided they are of the same value. If by alteration or Additional control of the passager provided they are of the same value. If by alteration or Additional control of the passager provided they are of the same value. If any alteration or Additional control of the passager provided they are of the same value. If any alteration or Additional control of the passager provided they are of the same value. If any alteration or Additional control of the passager provided they are of the same value.

a. Assit tent of accommosations, I no company reserves the right to easing accommosation with that those previously assigned to the passenger provided they are of the same value. If y alteration or different use of the same on board the vessel, the assignment of accommodations should be changed, the Company shall have the right to cancel this coltract refunding the passenger the amount paid for the passage not used and the passenger will have no claim against the Company.

Anticipation or follow of sallings and arrivals. Cancellation of sailing. Change of itingrapy. The

Li società ni pient facolta di sopprimere la parçonza annunciaza, un aggiungere de omettere acami di las militale li Viaggio da un porto diverso di quello stabilito, di destinare la nave ad pitra imes. di anticipare o ritardare la data di partenta Nel caso in cui la partenza fissata fosse anticipata o ritardata per un periodo di tempo superiore a diec gorni, come nel case in cui la partienta foste sopressa. Il Socreta rimboriser al passaggero il ammontare baggita, in nessuno dei casi encui la partienta foste sopressa. Il Socreta rimboriser al passaggero il ammontare baggita in nessuno dei casi contempiati da questo articolo il passaggero avra diretto al rearcimento di danni o al rimborio

Neppure spettano al pesseggero indennità di sorta o rimborso di spese in caso di anticipo o ritardo nell'arrivo di spese di qualsiesi natura

Art. 10 - Svolgimento dell'itinerne's, trasbordi. • Il Comendante ha piena facolta di procedere senza pilota di rimorchiare e assistere altre navi in qualitati circostanza. di deviare dalla rotta ordinaria in qualsiasi direzione, per qualitats distants e a quelitati scopo di toccare, sia prima che dopo la partenza qualunque porto o porti trovantis o meno sull'itinerario della nave anche se in direzione contraria o oltre la usuale rotta. Sia retrocede ido che avano meno sull'itimerario della nave anche se in direzione contraria o oltre la usuale rotta, sia retrocedecido che avan-zando in quabina: ordine e a qualsiasi scorro una o più volle, di trasferire il passeggero a il bagalio. a spose e rischio del passeggero, si qualsiasi siltra have o altro mazzo di trasporto, apparenenti o meno alla bocieza, diretti al porto di destinazione e in nessuno di questi casi il passeggero avra diritto alla risoluzione del contratto, a risarcimento di destinazione e in nessuno di questi casi il passeggero avra diritto alla risoluzione del contratto, a risarcimento di danni o a rimborso di spese di qualsiasi natura.

At . V - Interruzione del pipggio. - Se il viaggio della neve oppure del passeggero e interrotto, doco la partenza relia nave end caso fortuito o fezz maggiore o per scopero dell'equipaggio o per scioperi portuali o per altra cabia non if trabile filli navi o al'osseggero, oppure per facto del passaggero, il viaggio stesso si considerera come

computo e il passeggero non sera diricto al rimborso del prezzo pageto pel tretto non percorso, ne a risarcimento Si danni ne a rimborso di spese di qualsiasi natura.

21 danni ne a rimborso di spese di quantità i passarra stipulato per imbarco in scali intermedi si intende subor Art. 12 — Scali intermedi. - Il contratto di passarra stipulato per imbarco in scali intermedi si intende subor fonaci ils consistone che il a vare abbis disponibilità ci "seti nel porto di scalo.

Art. 1/4 — Crociere. - Se il presente contratte di passaggio è stipulato per una crociera, hanno piene applicazione Art. 13 — Crociere. - De il presente tentratte di passaggie è stipulato per una crociera, name piene applicationi utili le condizioni previste nel concratto stesso, el è ulteriormente convenuto che se, per ciuse non imputabili alla locieta. Il crociera fosse interrotta in qualistasi punto, oppure se il suo proseguimento divensia, a giudizio del locieta, ils crociera por percoloso o imprudente, ils crociera potra essere modificata, accoriata, interrotta dopo la partenta comandante, percoloso o imprudente, ils crociera potra essere modificata, accoriata, interrotta dopo la partenta si società non rispondera degli eventuali danni o della perdita che derivasano a passeggero da tali modifiche, accoriata

e la Società non risponders degli eterritati danni a utili persità che dell'essersi i parteggi di Cumento o interruzioni, ne rimboriera in titto e in parte i prezzo di passaggio. Art. 14 — Condistanti sanitario del titolare dei bigliette. - La Società ha facoltà di rifiutare il passaggio a Art. 14 — Condizioni sanitario dei dicerare dei digietto. • La bocietà na sociata na sociata di sifentare il viaggio chiunque si trovi. a pruò sio della Società stessa, in condusioni di salute che non gli comentano di affrontare il viaggio chiunque si trovi. a pruò sio della Società ha inditre e a chiunque resulti, per maistra o deformat, percolònico o ripugnante agli altri passeggen. La Società ha inditre ca chiunque resulti, are maistra o deriventa, percolònico o ripugnante agli altri passeggen che risulti affetto da maistra comitata c Ugosa o ripugnante. In tutti i surriferiti casi il passeggero non avri diritto a risorcimento di danni. L'accettazione del passeggero da parte della Società non dovra essere considerata como rinuncia a qualunque suo diritto a far valere. is sue riserve sulle confisioni del passegero, sia che queste lossero conosciute o meno dalla Società si

Art 15 - Misure quarantenaris. - Nel caso in cui la nave sie detenuta in quarantena, il passeggero dovrà corri-Sondere alla Società, per ogni giornata interi di permanenta in quarantenti, dobo le prime 24 ore, le quote per vitto.
Sondere alla Società, per ogni giornata interi di permanenta in quarantenti, dobo le prime 24 ore, le quote per vitto.
Sondere alla Società, per ogni giornata interi the per moure duranteeare non potesse sharcare nel porto di destinazione e dovesse proseguire fino ad un approdo occessive, dovra corrispondere sila Società il supplemento di prezzo per il maggier percorso. Se lo scalo nel porto successive, dovra corrispondere sila Società il supplemento di prezzo per il maggier percorso. Se lo scalo nel porto excessivo, corra corraponere sua ancrea il supplemento di presso per il maggior percorso, se lo scalo nel porte di destinazione del ossieggiro potesse rendere la nave — a giudizio esclusivo del Capitano — soggetta a misure di evarantena o ad altre misure restrictive in qualcuno dei porti successivi, lo scalo della nave in tale porto di desti-Albane sara soppresso ed il passeggero colà destinato verra sbarcato nel porto ritenuto conveniente a giudizi tivo del Capitano, nel qual porto il viaggio si intendera terminato, ad ogni effetto. Resta salvo il diretto della Società ad octenere il supplemento di prezzo per il maggiore percorso

Art. 16 - Percorsi combinati su mezzi di altri vettori. - In caso di inizio e di prosecuzione dei viaggio su Art. 16 — Percorsi commenzati su mezzi di altri vettori, - in caso di insio o di prosecuzione dei viaggio su nere o navi di altri vettori o con altri mezzi di trasporto, il passeggero dovris tottostrar alle condizioni di pas-taggio di detti vettori e non porta pretendere della Società i risarcimento di qualsiasi danno. La Società sara respon-sabile solamente pel tratto di trasporto che essa effettuera con sua nave e alle condizioni dei presente contratto. restando escipia qualsiasi solidarietà fra la Società ed i vettori precidenti e o successivi. La Società impitre, non assume Neura responsabilità nei caso in cui non si rerrichi la concidenza ira le sue navi o fra queste ed i mezzi di traspo orcuna responsabilica nel caso in un constitui la conficienza in a constituenza in a successiva del constitui del posto unulla nave o qualunque altro mezzo su cui deve effectuaria di attri vettori, e non giranticacio la disposizioni del posto unulla nave o qualunque altro mezzo su cui deve effectuaria di attributorio de a posto di trabborio del rabborio di attributo di di trabborio de a posto di trabborio del posto di constitui di di trabborio del posto di posto di attributo di constitui di trabborio di capone di caso di constitui d

trasbordo, sono a totale carico del passeggero. Art. 17 — Norme da osservarsi dal patieggero. Il passeggero è tenuto ad uniformarsi alle prescrizioni delle Art. 17 — Norme da osservarsi dal patieggero. Il passeggero è tenuto ad uniformarsi alle prescrizioni della Leggi Italiane ed Essere nonche si Regolamenti della Società e alle disposizioni date dai Comandante della nave. Legg. Italiane ed Etiere nonche si negoramenti della Società e alle disposizioni date dal Comandante della nave.

Art. 18 — Responsabilità del passeggero. Il passeggero risponde direttamente verso il Società di Lutte il discontravenzioni, molette, multe e spesi sile quali, per facto suo, il Società na sasoggettata de parte delle Autonità contravvenzioni, molette, multe e spesi sile quali, per facto suo, il Società na sasoggettata de parte delle Autonità contravenzioni, moletamenti della factorità del parte delle Autonità di parte della nave. In nessun caso il responsabilità della Società verso il passeggero Art. 19 — Fatti verificantità luori della nave. Desi sisso arrasporte, compresso quallo ellevisioni a marzo imbarcazioni.

v estende a latti versicantisi luori della nave. Ogni altro trasporte, compreso quello effettuato a mezzo imbarca HIS o dalla nave. e cosi pure quassasi escursione o viaggio a terra, sono organizzati unicamente per conto e comogica

is conviene quinds che il passeggero, accettando biglietti e servizi per escursioni o viaggi a terra o per qualsiasi altro trasporto, non acquista titelo alcuno verso la Societa e questa non sara in alcun modo responsabile per qualsias.

moony recoins the right to cancel the sailing, to have the vessel call at ports other ti own some of these ports, to commence the verying from other than the port scheduled, so put the visual makes in other stands of the ports of the por

in any of the cases herein concemplated the passenger shall not be entitled to any recovery for damages or refu

furthermore, the passenger shall not be entitled to indomnity or refund of expenses in case of advanced or delayed arrival of the vessel.

belayed arrival or till vesse.

10 — Development of the itinorary - Transhipments. - The Master has full authority to proceed without and seast vessels in all circumstances, to deviate from the ordinary route in any direction to any priors. To low and assist vesses in all circumstances, to deviate from the presently route in any direction to say distance and for any purpose. To call, before or after saving, at any port or ports contemplated or not in the stinnersry of the vessel even of in opposite direction or beyond the usual route either going back or proceeding in any under or for any purpose one or more times, and to transfer the passenger and his baggage at the pasin any sinder or for any purples one or more times, and to transfer the passenger and his baggage at the pas-senger's expense and risk to any other vessel or to any other means of transportation, whether becoming to the Company or not, bound for 'he port of destination, and in any of these cases the passenger shall not have the right to cancel the contract, or to any recovery of damages or to reimbursement of expenses of any kind.

Interruption of the vessage, "Should the voyage of the vessel or of the passenger be interrupted after saving due to fortuitous (vents or "force majeure" or other causes not imputable to the vessel or to the pas-

tenger or through act or deed of the passanger, the voyage itself will be deemed campioted and the passanger shall not be entitled to any refund of the passage money paid for the portion of transportation not effected, nor any recovery of damages nor reimbursement of expenses of any kind whatsoever.

inhall not be entitled to any refund of the passage money paid for the portion of transportation not effected, nor any recovery of damages nor rembursement of expenses of any tind whatsoever.

12" — Intermediate persts of call, "The passage contract supulsated for emberisation as intermediate ports of call is issued subject to the condition that the vessel has accommodations available at the port of call.

121" — Cruziers. "If this passage contract is assued for a cruzial, against the conditions set forth in the contract itself shall have full force and effect and, furthermore, it is mutual, agreed that if for claims not immutable to the hall have full force and effect and, furthermore, it is mutual, agreed that if for claims not immutable to the sating and the Company shall not be labeled for the continuation, in the judgment of the Plaser, should become dangerous or imprudent. The cruise shall be modified, curraised or interrupted at any point after the sating and the Company shall not be labele for desire, if any, or losses sustained by the passage in the passage of any one in such taxe of health or playsing the company reserves the right in its lose decreasion or reloss that the conditions of the passage to any one in such taxe of health or playsing condition as to be unfit to travel or whose condition through passage to any port of call during the encoded of the passage. Furthermore, the Company has the institute to land at any port of call during the encoded of the passage. The Company is acceptance of in all such cases, the passager shall not be desired a source by it of any right to object therefore to any constrolled on the company is acceptance of in all such cases, the passager shall not be desired a source by it of any right to object therefore to any constrolled on the company is acceptance of the passager shall not be desired a source by it of any right to object therefore to any constrolled to the passager shall now the company for board, longing and service on the vessel, because a such as a sha

t of destination because of quarantine and har to be landed at the near purt of calf he shall pay the

Company a supplemental fare for the additional voyage to said next port of cal. exclusive judgment of the Captain, the call of the ship at the port of destination of the passenger should If, in the exclusive judgment of the Captain, the call of the ship at the port of destination of the passinger should render the ship subject to quarantine or other restrictive measures in some of the ports of next Call, the call of the ship at the port of destination of the passinger shall be cancelled, and the passinger destined to said port the ship at the port of destination of the passinger shall be desembaried in that port which, in the exclusive judgment of the Captain, will be deemed convenient, and the voyage shall be deemed finished in that port for all purposes. The Company shall have the right to the control the control the control that the control the control that the control that

the voyage stati se deemes shisned in that pert for all purposes, the Gempany shall have the rige the supplementary fare for the major trip.

- Voyage combined with other carriers. - Should the voyage be initiated by or continued on in-

10' — Yoyages combined with other carriers. - Should the voyage be initiated by or continued on a vessel or vessels of other carriers or other means of transportation, the passenger shall be bound by the passage conditions of said carriers and shall not be entitled to recover from the Company for any damage. The Company will be responsible only for the portion of transportation effected by its vessels and subject to the terms of the present contract; any joint responsibility between the Company and a preceding and or following strains to evaluated.

impany likewise does not assume any responsibility in the case of failure of connection among its vessels Ine Company likewise does not assume any responsibility in the case of failure of connection among its reason or between its vasies and the means of transportation of other carriers and does not guarantee on the restel or on any other connecting means of transportation. All transhipment expenses of the passenger and his baggage as well as any expense for board and lodging whist awarting transhipment are to be paid by the carrier is excluded.

passenger.

17- — Passenger's observance of regulations. - The passenger shall be bound by italian and foreign laws, the Company's rules and regulations and any orders issued by the Master of the vessel.

18- — Passenger's responsibility. - The passenger shall be directly responsible to the Company for any penalties, inconveniences, fines and expenses which by his fault the Company may neur or may be assessed by port authorities, customs, health efficers or by any other officials of any country whatsoever.

24- — Occurroncys beyond the vessel's limits. - The responsibility of the Company shall in no case extend 19- — Occurroncys beyond the vessel's limits.

to anything which may happen to the passenger while he is not on the vetsel. Any other transportation include transportation by tender to or from the ship and likewise any excursions or shore transportation by tender to or from the ship and likewise any excursions or shore transportation. the account and convenience of the passenger and at the passenger : sole risky

infortunio o danno alla persona o alle cose del passeggero durante i detti serviti, escursioni e viaggi o qualsiasi altro trasporso con qualsiasi messo, mentre il passeggero si trova fuori della neve.

Art. 20 — Bagagillo - il suggillo deve contenere esclusivamente affetti di uso personale del passeggero. Il quantitarro di baggillo the cassour passeggero pert trasportare in franchign è ssabilito dalle tarrife della Società. È contarro di baggillo the cassour passeggero che tutto il suo baggillo, compireno quello che eventualmente eccesi detta
controliza untiamente attutte le cose che i passeggro ha con eta borrie, ils un valore non superiore a 200 (deucento)
foliari U.S.A. Su questa valutazione e in paria basso il preszo di passeggio, nonche il prezzo di prasporto dell' eventutte eccedenza basselle.

custe occedenza bagaglio.

É consequencements convenuto che in caso di perdita totale dei bagaglio e delle altre cose dei Dasseggero, della
É consequencements convenuto che in caso di perdita totale della Società non eccedera la somma di dollari U.S.A.
quale perdita la Società debba rispondera. « responsabilità della Società non eccedera la somma di dollari U.S.A.
200 (duvecnos) di il controvalore di dollari U.S.A. in irre stalana si tambio ufficiale, in caso di serio o perdita particolori di controvalore in controvalore in disconti ad una indennità personale
talati, di cui la Società debba rappondera, la responsabilità della Società serio ridotta ad una indennità proportionale
talati della imma, di dollari U.S.A. 200 (duvecnos), o al controvalore in lire al Cambio ufficiale si al momento di
alli della imma, di dollari U.S.A. 200 (duvecnos), o al controvalore in lire al Cambio ufficiale si al momento di
alli della imma, di dollari U.S.A. 200 (duvecnos), o al controvalore in lire al Cambio ufficiale si
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alla d alis detta somma di dollari U.S.A. 200 (diserento), o al concruvsiore in lire al cambio ufficiale Se al momento o prima della striputazione del presente concretto o al momento o prima della striputazione del presente concretto o al momento o prima della consegna del saggilio superso. Il cambio della consegna del saggilio superso i anzietta somma e se egii paga alla Societta un supple-dichiars per secretto che il valore dell' 1½ (uno per cento) sui maggior valore, cio che deve rasultare provento di sapporita riczività in diublice seemplare firmata della Societa e dal passoggero. Il responsabilità della Societta si estendera al funcio con consegnato dell' societta si estendera al funcio con consegnato dell' commissario. Come nel caso contemplato nel successivo art. 21. e si ostende a qualitazi cosa del passoggero che la Societta abbia in consegna anche prima dell'inizzio del visaggio e dopo la sua utirmazione.

Art. 21 — Documenti e valori di proprieta dei passoggere, il passoggere accetta di non tenere sulla sua persona, di non isocare in cabina e di non includere nel hagajile, documenti, manoscristi, denari e titoli di credica, persona, di non isocare in cabina e di non includere nel hagajile, documenti, manoscristi, denari e titoli di credica, personali e con personali e si cario. Eccasionalimente potra essere connentiza il imparca come bagajile, rati ed imbarcati con regolare polizza di carios. Eccasionalimente potra essere connentiza il manore come bagajile, dorri chiuderi in un picco signitato che affidera si Commissario della nave riturnade ricorvusta dei picco. Nelle navi sulle dorri chiuderi in un picco signitato che affidera si Commissario della nave riturnade ricorvusta dei picco. Nelle navi sulle di successa, il passoggero parte valerii dei servizio della cassette di sociaretta di

Art 22 — Espiosivi, infiammobili e materie pericolose. - È severamente proibito si passeggero di includere nei baggito o nelle cose di sua proprietà sostanza espiosive o infiammabili o sitrimenti pericolose per la sostrezza della nave e del carco, oppure per l'incolumità delle persone. Nel caso di infiazione, il Comandante e surorizzato a sequestrare destruggere tali sostanze sensa che il passeggero possa pretendere sicuna indennica. Il passeggero inoltre, tari tenuto responsabile delle conseguenze derivanti dall'infrazione di questo divieto.

Art. 23 — Armi. - I pesseggeri sil sta dell'imbarco hanno l'obbligo di consegnare in custodia si Comandante tutte le armi bianche e da fivoco eventualmente in loro possesse; in caso di inosservanza i construventori saranno passibili di confisca delle armi e deferimento sil'Autorità competente.

Art. 24 — Confezionamento, etichettameggio, imbarco e sbarco bagaglio, - Ogni collo di bagaglio dere essere saleamente imbaliato a cura oli passeggire e deve portare charamente indicati cogneme, nomene destinazione della nave e della classa. I passeggiri deremo sorreggiare i imbarco del passeggiro coi appartiente ditre alla indicazione della nave e della classa. I passeggiri deremo sorreggiare i imbarco del baggigirio accertandosi, prima della parrionaz che esso sa tutto a bordo e provvedenno al ricuro della ricuro del paggigira e servici, gi eveno provvedere, all'arrivo nei sorro di destinazione, alle operazioni di svircolta per i colli di baggigira e servici, gi eveno provvedere, all'arrivo nei sorro di destinazione, alle operazioni di svircolta di paggigira esteria, per colli di successione di svircolta di paggigira servici, gi eveno provvedere, all'arrivo nei sorro di destinazione, alle operazioni di svircolta di paggigira servici, gi eveno provvedere, all'arrivo nei sorro di estinazione, alle operazioni di svircolta di paggigira servici, provvedere di svircolta di paggigira servici, per contratto della paggira provvedere di periori .

It is, therefore, mutually agreed that the passenger by accepting tickets and services for excursions or shore trips or for any other transportation acquires no rights against the Company and the Company will in the way be corresponsible for any accisions or damage to him or his property occurring during said services, excursions or shore trips or any other transportation of any kind white the passenger is beyond the limits of the vessel.

20 — Baccana — Burgar must contain only memoral instance appear and offers for one by the assence. The

20 - Baggage - Baggage must contain only personal wearing apparel and effects for use by the passenger. The amount of haggage that each passenger is permitted at carry without additional charge is established in the tand

of the Company
It is mutually agreed between the C pany and the masenger that the value of all his baggage whether or not it exceeds the amount that it is not in the control of the excess of the excess the amount that it is not exceed to 200 United Stati croncy. The fare for the verage and the cost of transportation of the excess baggage, if any, is in part base, upon the valuation. It is, therefore, mutually agreed that in case of the total local of the excess of the exces

sany's liability shall not exceed the sum of \$ 200 United States currency or the counter value of U. 3. 5 200 in Italian lire tit the official rate of exchange. In case of damage or portial loss for which the Company may be liable, the liability of the Company shall be in case of damage or portial loss for which the Company may be liable, the liability of the Company shall be proposed to the sover-named sum of \$ 200 proportionately reduced and the indemnity computed on a pro-rate basis of the above-named sum of \$ 200 proportionately reduced to the contract. Of at or before the delivery in the Stagage to the vessel, the passanger declars in strain, the state of \$ 200 and if he pays to the Company retries, that the value of said baggage is in excess of the said value of \$ 200 and if he pays to the Company retries, that the value of said baggage is in excess of the said value of \$ 200 and if he pays to the Company additional compensation at the rate of \$ 200 one per cent) on such sacess of value for which or retrieval to the said value of the pays to the Company is lability shall not exceed such specified value. All the foregoing shall apply prespective of whether the baggage is deposited in the hold or cabin pays the pays of the pays of the pays of which the baggage is deposited in the hold or cabin pays of the pays of the pays of which the Company has received even before the commencement and varyage or state its termination.

voyage or siter its termination.

21 — Decuments and valuable property of the passenger. - The passenger agrees that he shall not acry
on his person nor leave in his cabin, nor include in his baggage, document, manuscripts, money, securities and
instruments of credit, pewerly, precious stones or precious motath or valuables of any description. Such straight
may be declared and shipped as freight under the Company's regular bill of lading. Excessionally, the Company
as surhorize the shipment as baggage, if such articles may be appropriately pieced in the ship's safe, if space
for same is available, in such case, the passenger, shall piace the said articles in a sealed pockage which will be
for same is available, in such case, the passenger, shall piace the said articles in a sealed pockage which will be
delivered to the purser will give a written receipt. On ships having safe deposit boxes,
delivered to the purser will give a written receipt. On ships having safe deposit boxes,
the passenger may subject to the regulations of the Company avail himself of the use of same. Since the custody
of said package and the use of the safe deposit boxes in without charge to the passenger, the Company will not
be liable for loss of disange or injury to, or delay in the delivery of same. hable for loss of, damage or injury to, or delay in the deliver; of same.

22 — Explosives and inflamable goods. - The passenger a strictly forbidden to include in his baggage or property explosives or inflamables: in case he does so the Master has authority to coniucate and destroy such assentances and the passenger is not entitled to any indemnity, in addition, the passenger will be held responsible softiance and the passenger is not entitled to any indemnity in addition.

for any consequences arising from any breach of this prohibition 22 — Arms. The passenger at the time of emparking must deliver to the Master all weapons or fire arms, if any, on his possession, to radiceoping during the voyage. Failure to comply with this regulation will result in conflictation of such weapons or fire arms and the reporting of the oldender to the competent authorises.

contrication of such weapons or fire arms and the reporting of the offender to the competent suchborities. 24' — Packaging, labelling, embarisation and debarkation of baggage. - Each pace of baggage must be securely packed by the passanger and distinctly labelled by him with his name, port of destination, this and class. The passanger must personally strend to the taking on boars of his baggage, sucertaining prior to the despitive of the thip that all such baggage is on board obtain receipts for the bocks placed in the baggage room and in the hold and undertake cleaning the baggage at the point of destination. The Company undertakes only to convey the baggage from the port of embursation to the point of destination named in the present contract. In case the

ille dette norme, nessun indennizzo potrà essere preteso nei confronzi della Società

In caso di mancata octemperanza alle dette norme, nessun indennizza potra essere pressona di cualizza cuanda di passigni dei passigni per un cara di mancata perdita o danno si baggio dei passigni pricardo nella consegna di dualizza baggio, finche non le La Società non risponde della perdita, danneggiamento o ristato consegnato sulla banchina del porto di mitorco o a bordo e non na stata risiacuta ricevuta per tale baggio su stato consegnato sulla banchina del porto di mitorco o a bordo e non na stata risiacuta ricevuta per tale baggio al termini della norme e condizioni dei presante contratto. Rilascuta tale ricevuta, la Società na directo di ricenzione e pegno sul la sulla directo di mitori di ricenzione e pegno sul

Arr. 25 — Pagno sui bagagli e sulle aitre cose dei passeggere. La Società ha diretto di ritonzione e pagno sui bataglio e sulle aitre cose dei passeggero consequentemente, qualora il passeggero non paghi quanto dovuto alla bataglio e sulle aitre cose dei passeggero, consequentemente, qualora il passeggero non paghi quanto dovuto alla bataglio e le aitre cose dei passeggero. a messe di pubblici mediatori, senza autoruzzazione giudiziale. fine a concorrenza dell'intera somma dovutale.

PUDEINCI mediatori, senza autorizzazione giudiziare, nno a concorrenza delli intera sommis provintate.

Art. 26 — Ricirio bagogitio, - i begagli non ricirati nei termine di sei mesi dal giorno della persenza della nore is considerano e vengon tirattati con- orgatti sibbandonati.

Il considerano e vengon tirattati con- orgatti sibbandonati.

Osalori si bagglio non venga ricirato entre il destio termine (e sempreche esse non sia stato venduto entro più breve termine per disposizione di Autorita locale de in Regolamenti dei magizzani e a caperiura di quanto fosse breve termine per disposizione di Autorita locale dei Regolamenti dei magizzani e a caperiura di quanto fosse breve termine per disposizione di Saccettà, la Societtà serà facolta di procedere alla vendita senzia autorizzazione giudiziale delovito del passeggere dalla societtà, dedotte repore la competenze dovire alla Societta, sara tenuto a disposizione del proprietazio dei baggito chi dovra currante del societta.

Tessione ontro un anno della paranta della nave: scadute tale termine la somma regionale sara acquisita dalla Societtà.

Art. 2) — Perdita e:o avarie dei bagagio. - La perdita e:o avarie dei bagagio devono essere fatte constata
Art. 2) — Perdita e:o avarie dei bagagio. - La perdita e:o avarie dei bagagio devono essere fatte constata
di passeggero al Conando della nave oppura gli Agenu e:o Uffici della Società nei porto di sharco — a peni di
decidenza — ai momente della ricomegna se trattati di perdita o di avarie apparenti,
riconegna se trattati di perdita o di avarie non apporenti.
Fer i bagagii e gli oggetti con consegnati dal passoggero alla Società, questa non e responsabile della perdita
della avarie se non quando il passeggero provi che le stesse sono trate dotarminate da causa imputabile alla Societ
della avarie se non quando il passeggero provi che le stesse sono trate dotarminate da causa imputabile alla Societ

Art. 25 — Animali domostici e uccelli ai seguito del passeggere. - E' cansantito il trasporto degli animali e uccelli al seguito del passeggere solizanto se egli sia in pessesso dello speciali "Riccontro per il trasporto di sammali seguito del passeggere (Animali ticket)", le cui conditioni sono qui richiamate e da considerarsi parte integrante del prasente bigliette.

passenger fails to comply with these regulations the Company shall not be liable for any loss or damage to the passenger's baggage. The Company shall not be liable for any last, damage or delay in the delivery of any baggage where, such baggage is not delivered to it either on the wharf or in beard and where a receipt is not issue for such or the baggage subject. however, issuer for said baggage, boon issuing such receipt, the Communy shall be liable for the baggage subject. however, it is the first said conditions of this contract. The expenses for embarkation and debarkation of the baggage shall to the terms and conditions of this contract.

issuer for said baggage. Upon issuing such receipt, the Company shall be liable for the baggage subject, however, to the terms and conditions of the contract. The expenses for embarkation and debarkation of the baggage shall be asid by the passenger.

25" — Lien on baggage and other property of passenger. - The Company has the right to withhold the baggage and other property of the passenger and exercise its right to a lien thereon. If the passenger fails to baggage and other above the company that the passenger fails to baggage and their property of the passenger is necessary to sately said obligation, toold by public, difficult, without judical sutherity property of the passenger, a baggage not claimed within six (6) months from the date of sutherities will be considered seandoned and so treated, if such leagues in set claimed within six (6) months from the date of other works will be considered seandoned and so treated, if such leagues in set claimed within said particular where stored, or to satisfy any obligation of the passenger to the Company, the Company without any publical where stored, or to satisfy any obligation of the passenger to the Company, the Company without any publical where stored, or to satisfy any obligation of the passenger to the Company, the Company without any publical where stored, or to satisfy any obligation of the passenger to the Company, and of any expenses will be held at the proceeds of the tale safer deduction of any sums due to the Company, and of any expenses will be held at the safe of the safe after deduction of any sums due to the Company, and of any expenses will be held at the safe of the safe and the safe of visible loss or damage to the baggage. - In case of visible loss or damage to the baggage, in case of visible loss or damage to the baggage is delivered to the passenger. If the loss or damage is not apparent. The company is the basic or damage to the baggage is delivered to the passenger. If the loss or damage is not apparent to the loss or damage to the baggage

della perdica, avaria o danno del suo bagagino e delle altre sue cose, caponate da circostanze di forza meggiore, da canno, rischi di mars, di perti, di fiumi o attre acque nempetini, de fiudio, haratteria del Comandanto ed equipaggio, nemio, rischi di mars, di perti, di fiumi o attre acque nempetini, de fiudio, haratteria del Comandanto ed equipaggio, fierza, priserias, arretto octutiva per ordine de principe o capo di spopio, de racchi di guerra, disposizione di giunitari structura di rischi anticone di distanti di suorio di qualitati perce, di sposizione di giunitari specie, de progratiane, de colagge di liquidi, unididati rigiginata o colpa del personate o agenti della Societa, pordo a terra, in acqui di mare, esta manorio della nave, per qualissasi causta di fiuoni di controlle della Societa, purche la Societa tandi diligenza per rendere la nave atta olla nevigazione, della Societa, purche la Societa sobio senciziono in normale dei disenza per rendere la nave atta olla nevigazione, della societa di qualissas genere, a sebos senciziono in nariono dei disenza per rendere la nave atta olla nevigazione, della l'imbarco a sile sbarco di ordine. La Societa non riaponde dei danni derivanti si passeggero dalla suoi revesione all'imbarco a sile sbarco di ordine. La Societa non riaponde dei danni derivanti si passeggero dalla suoi revesione all'imbarco a sile sbarco di ordine la Societa pomenta di conditata della discritazi cui i passeggero si assoggettato, di amancazza di curica, en risponde di pictura consequenza, e a segmento il ordine di servizio medico, per i passeggero che non siano di catrazi casso di ciasse equipazza, a la segmento il onorario dei medico medico, per i passeggero che non siano di catrazi cata di danno di ciasso di ciasse equipazza a la segmenta il onorario dei medico medico, per i passeggero che non siano di catrazi cata di discrita di Genova.

of sverage or damage to his baggage and sersional property arising from "farce majoure", the innemy, service of color navigable waters or of harbors, fire, bernary of the Platter and crow, robbery, fire, bernary of the Platter and crow, robbery, fire, bernary of the Platter and crow, robbery, fire, bernary or sessure by order of Prince, ruler of people, risk of wer, governmental restraint routs, strikes, fire, bernary or to be considered and the color of the company to the color of the company of the strip of the color of the Company or board, on there, divided the services of the Company or board on the color of the company of the strip or otherwise, explosions, breakage of the shaft or any leaent of the Company, provided the transces of the visited or for any case of whatsoever and beyond the third of the Company, provided the company and the color of the company of the company and the color of the company of the color of the company of the color of the company of the color of the color of the company of the color of the company of the color of the company of the color of the co

pericolose a se e o agli altri dal medico di bordo, il basseggero stesso dovra rimborsare alla Societa, prima dello sbarco, le apese che sias avva sostenuto per la di lui sorvegianza, che sar's effettuata, durante il viaggio, dai personaie di bordo. La Societa non risponee attenza di alcuna perdita, di alcun danno o risproe derivame da dietto inisto, da diusita e viaso del baggilio o degli effetti, pernonaii del passeggero o da insufficienza o mancanza di eschette, indirizza o describine di tale baggilio di effetti.
Il barbiere, il parrucchiere per uomo o per signora, la manicure, il pedicure. Il estriata ed il massaggiatore di bordo, hanno facolta di applicare una apposita tarifia di prezzi soggetti all'approvazione della Societa per qualinque servicio, nano facolta di applicare una apposita tarifia di prezzi soggetti all'approvazione della Societa per qualinque servicio, prestato al passeggero. Is Societa, il Comandante e la nave non avranno ingerenza alcuna circa le loro prestationi. nel responsabilità per i danni che assi di loro dantitate alla sustanti al passeggero o al suo bagaglio da sequestro della nave a segurio di procedimento legale, o di qualissa sitto, omissione, colpa o negligenza di qualissa altre passeggero, o da supuro di procedimento legale, o di qualissa sitto, omissione, colpa o negligenza di qualissa altre passeggero, o da supura di procedimento legale, o di qualissa sitto, omissione, colpa o negligenza di qualissa altre passeggero, o da supura di procedimento legale, o di qualissa sitto, omissione, colpa o negligenza di qualissa altre passeggero, o da negligenza di pusico altre passeggero, o da supura altre passeggero, o da controli della Societa, e Nossuna azione o lite contro la Societa, per perdita della vita.

qualisasi altra causa al di fuori del controllo della Societa che non sia specificatamente sopra elencata.

Art. 30 — Termini per azioni contro la Societa. Nossuna azione o lite contro la Societa per perdita della vita od infortunio di qualisasi natura occorso al passeggero, potra essere promosa se non sara data comunicazione acritta del sinistro alla Societa del sinistro alla Societa del contro la Societa del contro la Societa del contro la Societa del contro la Societa per qualinque altre motivo. E dettagli del caso, alla Societa della Dalla della Dalla della de

Art. 31 — Fissazione di relazione alla responsabili-nessuna pattuizione, varia: contratto, sara valida se n

Art. 32 — Responsabili ed eccesioni relative alla Agenti, delle sue navi, de

Art. 3) -- Separabilità indipendenti una dall' ait-non arra per conseguer contratto di passagg

The SS MICHELANGELO", SS RAFFAELLO", SS LEONARDO DA VINCI" and SS CRISTOFORO Colombo **, ships of Italian Registry, meet International Safety Standards for new ships developed in 1948** and 1960* and neet Fire Safety Requirements.

ente

Art. 34 — Compete (1) are a presente contratto di passaggio diviranno essere promosse innata silis Auper sorgere in dipendenti o relazione si presente contratto di passaggio diviranno essere promosse innata silis Auper sorgere in dipendenti di Genora, derograndosi espressamente silis competenza di qualsiasi altra Autorita, anche in dipentorita Giudiziaria di Genora, derograndosi espressamente silis competenza di uniterrizzano edita prestrizione non si effettuera che per
domanda giudiziale proposta davanti alle competenti. Autorità di Genora.

Art. 35 - Legge regolatrico del contratto. - Il presente contratto di passaggio è regolato dalla Legge italiana

Il sottoscristo, intestatario del presente contratto di passaggio dichiara, ai sensi e per gli effetti di cui agli art. 1341 del higente Cobice Civilo Rialiano. di conoscire ed approvare tutte le condisioni e le clausole contenute nel presente colimitato di passaggio e specificasamente approva le clausole distinte coi numeri 1, 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 23, 24, 26, 27, 29, 30, 32, 33, 34, 35.

reveals symptoms of mental disorder during the voyage and is considered by the ship's doctor dangerous to himself, and or to others, the bassenger shall reimburse the Company for the expenses incurred by it in navnif him watched during the tirp by the ship personnel. The Company shall not be liable for any loss, damage or insufficiency or absence of baggage labels or of addresses or description of such baggage or affect. The sample hardresser, manifected to baggage labels or of addresses or description of such baggage or affect. The sample, the to the approval of the Company for any services beginning that be entitled to make an appropriate charge subject to the approval of the Company for any services beginned with respect to passenger, but the Company, the Master and the ship shall not be concerned otherwise in any say in said services nor shall be liable for any flexither hand that such persons or their asstants may cause to the passenger by their services or treatments or inconsciouence theired!

Neither hall the Company be liable for any loss or damage course to the passenger or his baggage for seizure held the service in the sample of the ressel under legal process or for any act, omission, fault or negligence of any other satisfies or some of their company not specifically enumerated above.

30:— Limitation of action against the Company,— No action or proceeding against the Company for distributed unless written source a given to the Company or full duly authorized Agent within six months from the day when the death or injury occurred. No action arising the company for loss or damage to baggage or for estimation of the passenger or delay in landing or any other cause shall be instituted unless written source of the claim with full structure or any other cause shall be instituted by the bassenger unless written house or delay in landing or any other cause shall be instituted by the bassenger unless written house or delay in landing or any other cause shall be instituted by the passenger of loss or delay o

Company.

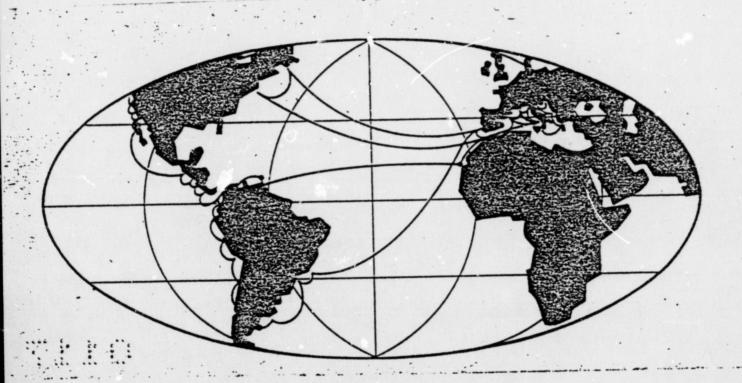
33: — Separability of the terms of the contract: - The terms of this passage contract shall be separable the illegality or invalidity of any article. 5 regraph, clause or provision in whole or in part shall not effect invalidate any other article, paragraph, clause or provisions rhered.

34: — Venue of judicial procoedings in arreption of Statute of limitations. - All controverses that it are directly or indirectly in connection with or in relation to this passage contract. must be instituted in the judicial authority in Genea, the presentance and was the judicial authority in Genea, the onnecting causes before other Courts. It is mutually agreed that there is seen in the case of contemporary connecting causes before other Courts. It is mutually agreed that there is be neceroption in the running of the Statute of Limitations unless a judicial request is field before competent authority in Genea.

35: — Ruling law of this contract. - The passage contract is subject to the Italian Law.

I. the undersigned holder of this Passage Contract. do hereby declare to the effects and under provisions Art. 1341 & 1342 of the Italian Civil Code in force, that I im aware and adhere to all conditions and clauses forth in the Passage Contract, and that I specifically approve clauses Nos. 1, 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 16, 20, 21, 23, 24, 26, 27, 29, 30, 32, 31, 34, 35.

ALIA" Soc. per Azioni di Navigazione - Genova - Cap. Soc. 10.000.000.000 inti sisance biliette di passaggo è soggetto sile condizioni stampace sulla copercina e sui fogli n. 1 e 2 - Ni sisance biliette di passaggo è soggetto sile condizioni stampace sulla copercina e sui fogli n. 1 e 2 - Ni sect to the condizionale princiale dei the center of this tricket which form part of this contract - NO	eramente versato	PER IL PASSEGGERO (non valido per il passaccio) PASSENGER'S COPY (not good for passacci)		ASSAGE CO		№ 39	
intente billiette de passages a bagette. et to the conditions printed on the cover of this ticket which form part of this contract. NO et to the conditions printed on the cover of this ticket which form part of this contract. NO ITALIAN PLAG SHIP SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE SSE L. R. U. I. S. E. ITALIAN PLAG SHIP SSE SSE SSE SSE SSE SSE SSE S	ARYC DA	ATA DI PARTENZA DECE	Noc	N 1	ORA DI IMBARCO EMBARKATION TIMI BASE CELLA TARIFF FARE BASI	· CRU	ISE
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

70 CIVIL 5629

RALPH METZGER, JR.,
ADELE METZGER and
RALPH METZGER III, an infant under 14,
by his parent, Ralph Metzger, Jr.,

: INTERROGATORIES

-against-

THE ITALIAN LINE,

Defendant.

Plaintiffs,

INTERROGATORIES ADDRESSED TO PLAINTIFFS TO BE ANSWERED IN WRITING AND UNDER CATH, INDIVIDUALLY.
DEFENDANT DEMANDS THAT THE ANSWERS TO THESE
INTERROGATORIES INCLUDE ALL THE PERTINENT
INFORMATION OBTAINED BY THE ATTORNEYS FOR THE PLAINTIFFS THROUGH THEIR INTERVIEWS WITH WIT-NESSES AND THROUGH THEIR OTHER INVESTIGATIONS, IN ADDITION TO THE INFORMATION WITHIN THE PLAINTIFFS' PERSONAL KNOWLDGE.

FIRST: Set forth the evidenciary facts upon which the plaintiffs base their claim for negligence.

SECOND: (a) If the plaintiffs claim that any of the defendant's agents or employees were negligent, name or otherwise identify each such agent or employee and state in what respect each one named was negligent. (b) State how the negligence of each party named in subdivision (a) above contributed to the plaintiffs' injuries and/or illnesses.

THIRD: Set forth the evidentiary facts upon which the plaintiffs base their claim that the vessel was unseaworthy.

POURTH: State each and every injury and/or illness sustained by the plaintiffs for which they claim this defendant is responsible, giving the name, location, extent and duration of each injury and state which, if any, is claimed to be permanent.

77041

PIFTH: State how long on account of injuries and/or illnesses for which the plaintiffs claim this defendant is responsible, the plaintiffs were: (a) confined to the hospital: (b) confined to bed; (c) confined to their home; and (d) unable to work, stating the inclusive dates of each period of time.

SIXTH: (a) State the name and address of each hospital, if any, at which they received treatments for their alleged injuries and/or illnesses and; (b) indicate which treatments were received as an impatient and which as an outpatient; (c) if as impatients, give the dates their treatments commenced, the date of each treatment and the dates they were discharged.

SEVENTH: State whether the plaintiffs have been examined by any doctor whom their lawyer has sent them to. If so, state the name and address of each doctor and the date and place of examination.

ENGHTH: (a) Give the names and addresses, if any, of each physician or other person who examined, attended or treated plaintiffs as a result of the occurrence alleged in your complaint, and (b) state the number of consultations or treatments, the date of each, by whom each was made, and which of the treatments were at home, which were in a hospital and which were at the office of a physician.

NINTH: If the plaintiffs have had any injuries, illnesses, diseases or operations since the date of their injuries and/or illnesses claimed herein, state the nature of such, how they sustained the same, the names and addresses of physicians, surgeons or other persons who have examined them or rendered services to them for said injuries, illnesses, diseases or operations and the names and addresses of the hospitals at which they received treatments, giving the date each was admitted, the date of each treatment and the dates they were discharged.

or operations within ten years prior to the date of their injuries or illnesses claimed herein, state the nature of such, the names and addresses of physicians, surgeons or other persons who have examined them or rendered services to them for said injuries, illnesses, diseases or operations and the names and addresses of the hospitals at which they received treatments, giving the dates they were admitted, the date of each treatment and the dates they were discharged.

ELEVENTH: (a) State the amount of money plaintiffs claim to have expended for medical attention and medicines on account of the injuries and/or illnesses for which they claim this defendant is responsible, and (b) state the extent plaintiffs have become indebted for these items, if at all.

TWELFTH: (a) State the amount of money the plaintiffs claim to have lost because of the injuries and/or illnesses for which they claim this defendant is responsible, which the plaintiffs would otherwise have earned, and specify the job or jobs and the employer or employers at which or by whom it is claimed the plaintiffs would have been employed. (b) Set forth the exact period of time which was used in computing these lost earnings, the basis upon which this computation was made, including the hourly rate of pay, weekly rate of pay and days per week and the amount of overtime included, if any, and the number of hours of overtime.

THIRTEFATH: State whether the plaintiffs have returned to work since their alleged injuries and/or illnesses, if so:

- (a) Give the names and addresses of each of their employers;
- (b) the periods of time they worked for each employer; (c) the nature of the work performed and; (d) their weekly rate of base pay, and average weekly earnings in overtime.

FOURTEENTH: Give the name and last known address or otherwise identify any person whom the plaintiffs claim to have been a witness to the accident or has any knowledge with respect to the matters alleged in the complaint.

PIFTEENTH: (a) Give the name and last known address of each person from whom the plaintiffs or their attorney, or anyone acting on their behalf have obtained written and/or oral statements in regard to the matters alleged in the complaint.

(b) In each case, state by whom the statement was taken, where and when it was taken, whether written or oral and the location of the written statements at the present time.

SIXTEENTH: State whether the plaintiffs have been convicted of a crime. If so, state the date and court of conviction and the nature and circumstances of the crimes for which they were convicted.

Deen arrested. If so, state the time and place of the arrest, the person or agency executing the arrest and the nature and circumstances of the acts and/or omissions alleged to have been the basis for said arrest.

and/or state income tax returns for five (5) years prior to their accident and the years subsequent thereto, up to the present time. If so, state the date and particular branch office at which each return was filed and the amount of income reported.

MINERALE: State whether the plaintiffs have ever submitted a claim against, or instituted suit against any individual or corporation for personal injuries and/or illnesses allegedly sustained by the plaintiffs at any time. If so, state the dates of the injuries and/or illnesses, the names and addresses of the doctors and/or hospitals from or at which the plaintiffs re-

ceived treatments for said injuries and/or illnesses and the names of the individuals and/or corporations against whom the claim was submitted or the suit instituted, and the amount of money received as a result of such claim of suit.

TWENTIETH: Describe in detail the place and/or trea where plaintiffs were injured and whether they were passengers or drivers of a vehicle as alleged in the complaint.

TWENTY-FIRST: (a) Identify the vehicle by make, year, and registration number, in which plaintiffs were injured as alleged in the complaint. (b) Identify the vehicle by make, year, and registration number, with which the vehicle identified in part (a) was involved in an accident or collision.

TWENTY-SECOND: If the plaintiffs were passengers in a vehicle in which they claim they were injured, identify by name, address, and license and registration numbers the owners and drivers of the vehicle in which they claim they were injured.

TWENTY-THIRD: Identify by name, address, license and registration numbers the drivers and owners of the vehicles involved in plaintiffs' alleged accident, other then the one in which they were passengers.

TWENTY-FOURTH: Describe specifically the place, location, time and date where the accident occurred in which plaintiffs were injured as alleged in the complaint.

TWENTY-FINTH: (a) State whether plaintiffs hired, rented, leased, or otherwise engaged the vehicle and/or drivers of the same in which they claim they were injured. (b) If your answer to the foregoing is in the affirmative, state the time, date, and place where such hiring, renting, leasing, or engagement occurred. (c) State the name and address of the person from whom the said hiring, renting, leasing, or engagement of the vehicle in which they were injured was accomplished. (d) State

Interrogatories

the terms and conditions of the hiring, renting, leasing or engagement of the vehicle in which plaintiffs were injured.

THEMTY-SIXTH: (a) State whether the motor vehicle accident in which plaintiffs alleged they were involved was investigated by and/or reported to the police. (b) If your answer
to the foregoing is in the affirmative, identify the police
officer(s) who made the investigation and/or report and the address of that officer(s)' station, precinct, department or
borracks.

Dated: New York, N. Y. February / , 1971

KIRLIN, CAMPBELL & KEATING

THOMAS COYNE

By:

A Member of the Firm Attorneys for Defendant Office and P. O. Address 120 Broadway New York, N. Y. 10005 (212) 732-5520

TO: HERBERT J. KAPLOW, ESQ. Attorney for Plaintiffs Office and P. O. Address 170 Broadway New York, N. Y. 10038 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant

under 14, by his parent, Ralph Metzger, Jr.,

70 Civ. 5629 ML

ANSWERS TO

Plaintiffs INTERROGATORIES

X

-against-

THE ITALIAN LINE,

Defendant.

Plaintiffs, answering Interrogatories propounded to them by the defendant, state upon information and belief as follows:

master, crew and shoreside agents in that the Social Director or Cruise Director, prior to arrival at each port of call, warned passengers of the dangers of each individual port, but no word of warning was given with respect to Montego Bay and the taxi business at that port. The shoreside agents, whose knowledge of the taxi business at Montego Bay is chargeable to the defendant, were aware of the distinction between licensed and unlicensed taxis but failed to advise plaintiffs of the distinction so that plaintiffs became subjected to unnecessary dangers, which were reasonably foreseeable and reasonably preventable by the shore-

side agents of the defendant. All of the foregoing also rendered the vessel unseaworthy.

The improper and inadequate medical treatment of the plaintiffs by all the ship's personnel and shoreside agents aggravated the injuries sustained by the plaintiffs. Plaintiffs will present detailed proof of defendant's negligence and unseaworthiness at the trial.

The vessel was unseaworthy since the master and crew were not competent and not equal to their calling.

4. ADELE METZGER

December 30, 1969
Between Montego Bay and Ocho Rios, Jamaica, W. I.

Shock, Multiple bruises, fractured right leg (Fibula & Femur)

all of the aforesaid injuries and/or effects and consequences are of a permanent and lasting nature except for superficial contusions and abrasions which have healed. Metal plate and pins inserted.

RALPH METZGER, JR.

December 30, 1969
Between Montego Bay and Ocho Rios, Jamaica, W. I.

Bruised and lacerated left knee requiring stitches; abrasions of right thigh and both legs, Laceration of right temple requiring stitches, Shock Hematoma of right thigh.

All of the aforesai njuries and/or effects and consequences are of a permanent and lasting nature except for superficial contusions and abrasions which have healed.

RALPH METZGER, III

December 30, 1969 Between Montego Bay and Ocho Rios, Jamaica, W.I.

Bruises on both sides, laceration of right hand and forearm requiring stitches, laceration of left cheek and left eyebrow, requiring stitches, laceration of scalp requiring stitches, laceration of nose and chin requiring stitches.

Urethral strictures (anterior and posterior)

All of the aforesaid injuries and/or effect and consequences are of a permanent and lasting nature except for superficial contusions and abrasions which have healed.

5. & 6. ADELE METZGER

Fospitalized: St. James, Montego Bay, Jamaica December 30, 1969 - January 5, 1970

> Passaic General, Passaic, New Jersey January 6, 1970 - February 8, 1970

Confined to bed and home: Ten months

RALPH METZGER, JR.

Hospitalized: St. James, Montego Bay, Jamaica December 30, 1969 - January 5, 1970

Contined to Bed and Home: Until March 2,

Incapacitated from full employment: Until May 15, 1970

RALPH METZGER, III

Hospitalized: St. James, Montego Bay, Jamaica, December 30, 1969 - January 5, 1970

Fassaic General, Passaic, New Jersey January 15, 1970 - January 22, 1970 February 10, 1970 - February 12, 1970 May 27, 1970 - May 29, 1970 D.

Confined to Bed & Home: to January 26,1970

Incapacitated from School: to Jan. 26, 1970 Feb. 10 to Feb. 13, 1970 May 27 to May 29, 1970

7. No.

8. ADELE METZGER

Dec. 30, 1969 Falmouth Hosp. Dr. Berry 12/30/69-1/5/70 St. James Hosp. Dr. Hastings Dr. Charles V. 12/31/69-1/2/70 St. James Hosp. Lewis Dr. Marvin Rosenberg Jan. 6, 1970 142 Passaic Ave., Passaic, N.J. Removal of Cast Passaic Hosp. Jan. 7, 1970 Jan. 8 Open Reduction Passaic Hosp. 9 10 11 12 Visits in..... Passaic Hosp. 13

Jan. 14, 1970 15 } 16 } 17 } 19 } 21 } 23 } 25 } 27 }	Visits in	Passaic Hosp.
Feb. 2 } 6 8	Visits in	Passaic Hosp.
Mar.12 12 Apr.13 13 May 4 July 6	X-Pay in	Office Office Office Office Office Office
Oct. 6 Feb. 2,1971 Apr. 29 Aug. 10	Visit to Visit to Visit to X-Ray in Visit to	Office
Dr. Jeanne Jaggard Jan. 7, 1970	54 Steward A Passaic, N. Anasthesia	
Dr. Ira Mensher May 20, 1970	50 Plaza St. Visit to	Brooklyn, N.Y. Office
RALPH METZGER, JR.		

RA

Dec.30,1969 Falmouth Hosp. Dec.30,1969 St.James Hosp. to Jan.5,1970 Dr. Berry Dr. Hastings

245 Lexington Dr. Peter J.DeBell Passaic, N.J. Ave.

Jan. 6) 1970 9) 16) 23)	Visits to	Office
Feb.17 May 7	Visit to Visit to	Office Office
RALPH METZGER, II	Ī	
Dr. Berry	Dec.30,1969	Falmouth Hosp.
Dr. Hastings	Dec.30,1969 to Jan.5, 1970	St.James Hosp.
DeBell	245 Lexington Ave.	Passaic,N.J.
Jan. 6) 1970 9) 16) 23)	Visits to	Office
Feb. 17 May 7 May 28	Visit to Visit to and treatment at	Office Office Passaic
June 4 Nov. 2 June 24,1971	Visit to Visit to Visit to	Hosp. Office Office Office
Dr. Richard Fadil	124 Gregory Ave.	Passaic, N.J.
Jan.13,1970 15	Visit to Visit to and Treatment at	Office Passaic Hosp.
27 Feb. 10	Visit to and Treatment at Visit to	Office Passaic Hosp. Office
17 Mar. 10) 24) Apr. 28)	Visits to	Office

June 2) Visits to Office 23)
Sept. 1
Oct. 16
Dec. 11
Mar. 2,1971)
June 18,1971
Nov. 12,1971)

Dr. Albert Graeter Apt.21-K,285 Aycrigg Ave.,
Passaic, New Jersey

Jan. 19,1970 Anasthesia Passaic Hosp.
May 28,1970 Anasthesia Passaic Hosp.
Anasthesia Passaic Hosp.

Dr. Hugh P. Robin- 7 Bramhall St. Portland, Maine son
July 31, 1970 Visit to Office

Dr. Ira W. Mensher 50 Plaza St. Brooklyn, N.Y. May 22, 1970 Visit to Office

Dr. Samuel Baum

191 Passaic
Ave., Passaic, N.J.

June 9, 1970

Visit to

Office

9. ADELE METZGER

Oct. 18, 1971 - Dr. Marvin Rosenberg, 142
Passaic
Ave.
Passaic, N.J.

Severe contusion hypochondrium caused by slipping in puddle on kitchen floor.

May 23, 1971 - May 31, 1971 - Dr. Carl Raisin 124 Gregory Ave., Passaic, Hysterectomy at Passaic General Hospital

RALPH METZGER, III

Nov. 28, 1972 - Dr. Marvin Rosenberg, 142 Passaic Ave., Passaic, N.J.

Jammed thumb - Beth Israel Hospital, Passaic, N.J.

Feb. 11, 1973 - Dr. Hathaway Broken finger - Passaic General Hospital

Feb. 15,1973 - Dr. Rosenberg Treatment of broken finger

10. No prior injuries to same parts of body as injured in this accident.

- 11. Adele Metzger \$ 4,163.88 Ralph Metzger, Jr. \$ 363.42 Ralph Metzger, III \$ 2,704.79 \$ 7,232.09
- 12. ADELE METZGER

 Loss of Earnings: None
 Loss of Time: At least 1 year.

RALPH METZGER, JR. \$73.06 per day (\$18,996 _____ 260) - \$3680.39 50 3/8 working days

Loss of Pension:

Total Loss \$1590.16
\$5270.55

RALPH METZGER, III
Loss of Earnings: None
Loss of Time: 25 days from School

13. RALPH METZGER, JR. returned to his employment with U.S. Government full time on May 15, 1970 in his former capacity.

ADELE METZGER returned to her duties as a housewife on or about January 1, 1971.

RALPH METZGER, III returned to school on or about January 26, 1970 for the first time. However, since he was again twice hospitalized from February 10 to February 13, 1970 and from May 27 to May 29, 1970, he was also out of school at those times.

- 14. The owners and operators of the vehicles involved in the accident may have knowledge of the matters alleged in the complaint and the officers and crew of the vessel should have knowledge of the matters alleged in the complaint.
 - 15. a. Noneb. Not applicable
 - 16. No.
 - 17. No.
 - 18. Yes.
 - 19. No.
- 20. Main road at Harmony Hall near Duncans between Montego Bay and Ocho Rios, Jamaica, West Indies between mile posts 69 and 70.
 - b. Volkswagon AV 374
 Morris
 Fargo Truck AS 453
 Year unknown
 Year unknown
 Year unknown
 Year unknown
 Year unknown

22. Rambler Y-7990
Owner & Operator:
Address:

Godwin Johnson Mount Salem, Montego Bay or 2 St. Alban's Lane, Kingston 16

23. Morris BP 163
Owner:

C. Naime, Morris Hill, St. Thomas Kenneth Green, Yallahs,

Operator:

St. Thomas

Volkswagon AV 374 Owner & Operator Address:

Stanley Sinclair 77 Main St., Ocho Rios, St. Ann

Fargo Truck AS 453 Owner: Operator: Address:

Noel Oakley Felix Oakley 5 Elspet Ave., Kingston 10

The above information is based upon statements made by third parties but has not been verified by the plaintiffs.

- 24. See Answers # 4, 5 and 20.
- 25. Plaintiff hired the vehicle with its driver at dockside to perform taxi services.

26. a. Yes.b. Constabulary Office, Falmouth P.O.Corporal Bailey of Duncans

Dated: New York, New York May 7, 1973

Yours, etc.

HERBERT J. KAPLOW Attorney for Plaintiffs Office & P.O. Address 170 Broadway New York, New York 962-4736

To: KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Defendant
Office & P.O. Address
120 Broadway
New York, New York 10005
732-5520

Verification

STATE OF NEW YORK :

SS.:

COUNTY OF NEW YORK:

RALPH METZGER, JR. being duly sworn, deposes and says that deponent is one of the plaintiffs in the within action; that deponent has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me this 7th day of May, 1973

S/ Ralph Metzger, Jr.

Opinion and Order Appealed From

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

X

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant under 14 by his parent, Ralph Metzger, Jr.,

70 Civ. 5629

Plaintiffs

OPINION AND ORDER

-against-

THE ITALIAN LINE.

Defendant.

- X

CWEN, District Judge.

Defendant Italian Line moves for an order pursuant to Rule 56 (b) Fed. R. Civ. P. granting summary judgment dismissing the action. The motion is granted.

From the depositions of the plaintiffs themselves it appears that on December 30, 1972, plaintiffs, a father, mother and their young son, were passengers on the Leonardo DaVinci, the defendant's cruiseship in the Caribbean. The vessel put in Montego Bay, Jamaica, a scheduled port, and plaintiffs went ashore. Although the defendant offered optional supervised shore excursions for its passengers, plaintiffs did not avail themselves thereof, preferring to make their own arrangements for the day. Plaintiffs found a Jamaican Tourist Board official and inquired as to a taxi to Ocho Rios. He told them they could make their own arrangements for the trip, since

Opinion and Order Appealed From many taxies on the street were available for hire. Mr. Metzger proceeded to make arrangements with one of the commercially unlicensed drivers standing nearby to drive them to Ocho Rios. While enroute, the taxi in which the Metzgers were riding was involved in a four-car accident near the town of Duncans. All the plaintiffs sustained injuries and were taken to the nearest hospital at Faimouth for treatment. At the Falmouth Hospital plaintiffs were initially treated by one Dr. Berry. Mrs. Metzger had a fractured right femur and it was feared the son had possible injuries to his spleen. Dr. Berry wrote his diagnosis on the back of a cardwhich he gave to Mr. Metzger who then returned to the ship to get the ship's chief doctor, Dr. Noois. Dr. Nobis accompanied Mr. Metzger to the Falmouth Hospital where he conferred with Dr. Berry concerning the injuries. After the consultation Dr. Nobis informed Mr. Metzger and his family they would be better off remaining in Jamaica since the medical facilities aboard the ship would not be adequate to deal with any possible complications of the injuries Mrs. Metzger and her son had sustained. Mrs. Metzger and her son were then driven by ambulance to St. James Hospital in Montego Bay. The Leonardo DaVinci continued on the cruise. Mr. Metzger

Opinion and Order Appealed From stayed at the hospital where his wife and son were treated until they came home by air on January 5, 1970.

Plaintiffs claim negligence on the part of the defendant in two respects. First, that defendant failed to warn them of known dangers ashore, and specifically the existence of commercially unlicensed taxies and allege that that failure was the proximate cause of the plaintiffs' injuries. Secondly, plaintiffs claim that defendant was negligent when Dr. Nobis refused to accept plaintiffs back on board for the return trip to New York.

Turning to the first claim, on the established facts the defendant is not liable for injuries sustained by a passenger on shore by reason of a negligent independent contractor with whom the defendant has no relationship, and as to whom defendant had no awareness of a risk and consequently no duty to warn. See Feig v. American Airlines, Inc., 167 F.Supp. 843 (D.D.C. 1958). In the latter regard I note that in Jamaica drivers of both licensed and unlicensed taxies are held to the same degree of safety and competence by the Jamaica government and therefore there can be no question of notice to plaintiffs of different safety standards between commercially licensed and unlicensed vehicles, a claim that plaintiffs have urged.

Affidavit of Dr. Howard Balensweig

Opinion and Order Appealed From

The plaintiffs' second claim of negligence,
Dr. Nobis' refusal to take Mrs. Metzger and her son on
board the vessel, because of the inadequacy of the ship's
medical facilities to deal with possible complications,
I likewise conclude has no merit. From Dr. Berry, Dr.
Nobis learned of a possible abdominal problem as to the
son. He has stated in his affidavit that he and another
doctor on his staff on the vessel were general practitioners, not qualified surgeons, and the vessel was not equipped for abdominal surgery.* Indeed, had Dr. Nobis accepted the plaintiffs aboard and abdominal complications
thereafter ensued with which he was unable to deal, a
claim of negligence would surely have followed.**

^{*}The plaintiffs have made much of the fact that Dr. N bis' title is "Chief Surgeon." The fact that he held this title is irrelevant here, since the ship was not equipped for such complicated surgery, even had Dr. Nobis been trained to perform it.

^{**}Plaintiff's claim that they whould have been received aboard because "there were numerous physicians aboard... as cruise passengers..." is patently frivolous.

Opinion and Order Appealed From

Furthermore, even if under the facts, Dr. Nobis was negligent in not accepting plaintiffs on board, a shipowner is liable only on a showing that it was negligent in its selection of a competent physician. The fact that a ship's doctor may err in his treatment does not prove his incompetence, or that the shipowner was negligent in hiring him. The Korea Maru, 254 F.397 (9th Cir. 1918); Churchill v. United Fruit Co., 294 F. 400 (1 Cir., 1923); Branch v. Compagnie Generale Transatlantique, 11 F. Supp. 832 (S.D.N.Y. 1935); O'Brien v. Cunard Steamship Co., 154 Mass. 272, 28 N.E. 266; The Great Northern, 251 F. 826 (9th Cir. 1918); Laubheim v. De K.N.S. Co., 107 N.Y. 228, 13 N.E. 781 (1887); Amdur v. Zim Israel Navigation Company, 310 F. Supp. 1033 (S.D.N.Y. 1969).

Defendant's motion for summary judgment in its favor is granted.

SO ORDERED:

January 21, 1975. Unite

Richard Owen
United States District Judge

Affidavit of Dr. Rodolfo Nobis

Judgment Appealed From

-UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant under 14 by his parent, Ralph Metzger, Jr.

70 Civil 5629 (RO)

JUDGMENT

Plaintiffs,

-against -

THE ITALIAN LINE

Defendant.

Defendant having moved for summary judgment pursuant to Rule 56(b), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Richard Owen, United States District Judge, and the Court thereafter on January 24, 1975 having handed down its opinion and order granting the said motion, it is

ORDERED, ADJUDGED and DECREED: That defendant THE ITALIAN LINE, have judgment against the plaintiffs RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant under 14 by his parent, RALPH METZGER, JR., dismissing the action.

Dated: New York, N.Y. January 30, 1975

s/ Raymond F. Burghardt

U. S. DISTRICT COURT FILED JAN 30 1975 S. D. of N. Y. Affidavit of Dr. Rodolfo Nobis

Notice of Appeal

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER, and RALPH METZGER, III, an infant under 14 by his parent, Ralph Metzger,: Jr.

Plaintiffs,

Docket No. 70 Civil 5629 (RO)

-against-

THE ITALIAN LINE

Defendant.

Notice of Appeal

:

:

X

Notice is hereby given that Ralph Metzger, Jr., Adele Metzger and Ralph Metzger, III, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order pursuant to Rule 56 (b) FRCP granting Summary Judgment dismissing the action entered in this action on the 24th day of January, 1975 and said plaintiffs hereby appeal from the final judgment pursuant to the aforesaid order entered in this action on the 30th day of January, 1975 dismissing the action and from each and every portion of said order and said judgment.

Dated, New York, New York February 18, 1975

> HERBERT J. KAPLOW Attorney for Plaintiffs 170 Broadway New York, New York 10038 962-4736

Alliadvic of Dr. Ronald R. Berry

Notice of Appeal

To: Clerk of the Court United States District Court Southern District of New York

> Kirlin, Campbell & Keating Attorneys for Defendant 120 Broadway New York, New York 10005

Clerk of the Court United States Court of Appeals Second Circuit UNITED STATED S. STRICT COURT SOURTHERN DISTR OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER III, an infant under 14, by his parent, Ralph Metzger, Jr.,

Plaintiffs

NOTICE OF MOTION : FOR SUMMARY JUDG-MENT DISMISSING ACTION

-against -

70 CIV. 5629 (R.O.)

THE ITALIAN LINE

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon the pleadings, the annexed affidavits of Frank W. Stuhlman, Doctors Howard Balensweig, Rodolfo Nobis, Ronald K. Berry, Harland C. Hastings and Mr. Paul E. Levy, and the plaintiffs' depositions, sworn to on April 13, 1973, and the Statement pursuant to General Rule 9 (g) of this Court, the undersigned will move this Court before the Hon. Richard Owen, United States District Judge for the Southern District of New York, at the United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York in Room 2804 on the 1st day of November, 1974 at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure, granting summary judgment in favor of the defendant "Italia"-SoNotice of Motion for Summary Judgment Dismissing Action cieta per Azioni Di Navigazione-Genova, sued herein

cieta per Azioni Di Navigazione-Genova, sued herein as The Italian Line, dismissing the action, and for such other further and different relief that this Court may deem just and proper.

Dated: New York, New York October 16, 1974

KIRLIN, CAMPBELL & KEATING

By Frank W. Stuhlman

A Member of the Firm,
Attorneys for "ItaliaSocieta per Azioni Di
Navigazione-Genova, sued
herein as The Italian Line
Office & P.O. Address
120 Broadway
New York, N.Y. 10005

To: HERBERT J. KAPLOW, ESQ. Attorney for Plaintiff Office and P.O. Address 170 Broadway New York, N.Y. 10038 In Support of Motion

Affidavit of Frank W. Stuhlman In Support of Motion

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Same Title

STATE OF NEW YORK :

: SS .:

COUNTY OF NEW YORK:

FRANK W. STUHLMAN, being duly sworn, deposes and says:

I am an attorney at law, a member of the firm of Kirlin, Campbell & Keating, attorneys for the defendant ITALIAN LINE, also known as "ITALIA"-SOCIETA per AZIONI DI NAVIGAZIONE-GENOVA sued herein as THE ITALIAN LINE, and familiar with the facts, rleading and proceedings heretofore had in this action.

Plaintiffs appeared for their oral depositions, pursuant to defendant's notice, on May 19, 1971. Your deponent personally examined all three plaintiffs under oath. The statement under Rule 9(g), is based largely upon admitted and stated facts found in the testimony of plaintiffs and references to pages of their depositions follow each statement where pertinent. Subsequent to plaintiffs' depositions, your deponent personally traveled to Jamaica, BWI, and investigated the Claim.

Plaintiffs paid for passage on a LEONARDO DA

VINCI cruise to the Caribbean. The last port-of-call

Affidavit of Frank W. Stuhlman In Support of Motion

was Montego Bay, Jamaica, BWI. Shore excursions offered by the defendant at that time were refused by plaintiffs who preferred to make their own a rangements. They hired a taxi on shore, independently of the defendant or any of its agents, for a motor trip from Montego Bay to Ocho Rios. During that trip, the taxi they hired was involved in a collision and all plaintiffs were injured.

One issue is whether the defendant-shipowner can be held liable for negligence of a third party who injured passengers on shore some 28 miles from its vessel in a vehicle plaintiffs personally hired without the know-ledge of defendant and outside of defendant's supervision or control. Plaintiffs apparently claim that defendant should have warned them that some taxis they might find for hire on shore would be "Gypsy" taxis.

Defendant contends it is not liable as a matter of law on this issue for two reasons: 1. The vehicle hired by plaintiffs was driven by a licensed driver, and although his car did not have a commercial taxi license, drivers of both commercial taxis and private cars are held to the same standards of competency and safety by the Jamaican government. 2. In any event, defendant has no way of knowing that the driver hired by plaintiffs would be negligent and could not warn plaintiffs of this event.

Plaintiffs were taken to a hospital near the scene

Affidavit of Frank W. Stuhlman In Support of Motion

of accident where they were examined and given first-aid treatment. When the treating physician, Dr. Berry, learned that the shir's physician, Dr. Nobis, was not a qualified surgeon, he advised plaintiffs to remain in Jamaica for observation and they were taken to a government hospital (St. James) in Montego Bay, Jamaica, and were not repatriated on board ship. The second issue arises from plaintiffs' contentions that they should have been repatriated on board the vessel, which did not have a qualified surgeon or proper surgical equipment. Dr. Perry, the first examining physician and Dr. Hastings, the treating physician at the St. James Hospital, both advised this procedure because of possible intra-abdominal injury in the case of the son, Ralph Metzger, III, and also his mother, Adele Metzger, which possibility dictated a minimum of 36 hours' observation. Defendant's position is that if plaintiffs had been accepted on board the vessel, an abdominal operation might have been indicated for which the ship's doctors were not qualified and for which there was no proper equipment on board.

The basis of this motion is therefore that as a matter of law, the defendant's duty of care as a ship-owner to its passengers did not extend to an accident on shore outside its supervision and control. Defendant had

Affidavit of Frank W. Stuhlman In Support of Motion

no duty to "warn" its passengers against "Gypsy" taxis because they pass the same driving tests as commercially licensed taxis.

Moreover, it is defendant's contention that as a matter of law, it was entitled to rely upon the unanimous decision of the three physicians then available in deciding not to repatriate plaintiffs on board its vessel for their own health and safety.

Frank W. Stuhlman

Sworn to before me this
21st day of October 1974

Henry J. O'Brien
Notary Public

UNITED STATE'S DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Same Title

STATE OF NEW YORK :

SS.:

COUNTY OF NEW YORK:

DR. HOWARD BALENSWEIG, deposes and says:

I am a doctor of medicine, having graduated from Yale University with a B.S. degree in 1942 and with an M.D. degree from Cornell in 1946. I served as Captain in the United States Army Medical Corps. from 1947 to 1949. I was the recipient of a Frauenthal Fellowship, and have worked as a Resident in orthopedics on the staffs of the Hospital for Joint Diseases, New York Hospital, Grand Central Hospital and Hospital for Special Surgery. I am a Fellow of the American Academy of Orthopedic Surgeons and a Fellow of the American College of Surgeons. At the present time, I am practicing medicine at 667 Madison Avenue, New York City, and hold staff positions at New York Hospital, and the Hospital for Special Surgery and I am an instructor at Cornell University.

At the request of the law firm of Kirlin, Campbell & Keating, I reviewed hospital records pertaining to the Metzger Family and examined Ralph, Jr. and Adele

at my office. I also have read the affidavits of the ship's physician, Dr. Nobis and those of the treating physicians in Jamaica, W.I.: Dr. Berry and Dr. Hastings, concerning the Metzger Family. I am aware of the fact that the Metzger Family (consisting of the Father, Ralph, Jr., the Mother, Adele and Son, Ralph, III) were in a taxi accident in Jamaica, W.I. on December 30, 1969.

Having examined the pertinent records and Mrs. Metzger herself, I am acquainted with the injuries from which she suffered in that accident. Mrs. Metzger received a subtrochanteric facture of the right femur and a fracture of the shaft of the right fibula with multiple bruises. In an accident this severe, there is always present the danger of hidden injuries such as asymptomatic ruptured spleen, shock and/or internal bleeding. Because of the dangers inherent in the injuries received, there is a need of about two days' observation for delayed shock, internal bleeding or other trauma. Mrs. Metzger should not have been returned to the ship pursuant to good medical practice in the event the need of emergency or specialized care were to become manifest during that period and for the added reason that she required transfer in a plaster cast (stretcher). Mrs. Metzger weighed about 180 lbs. and the cast probably weighed another 40 lbs. Therefore, in addition to

the requirement of observation it would have been difficult and dangerous to transfer her by launch and a gangway back to a vessel in the harbor.

Regarding the son, Ralph Metzger, III, I make the following statement. It appears from the records this boy complained of abdominal pain following the accident. Anyone complaining of abdominal pain following an auto accident could well be suffering from intra-abdominal injuries. Such a person should be under mandatory medical observation for a minimum of 36 hours because of the danger of an acute abdominal crises such as ruptured spleen and/or ruptured viscous. In the event such potential intra-abdominal injuries developed under medical observation, prompt abdominal surgery would be required to avoid death. From the records I have read, three physicians indicated a need for medical observation for possible intra-abdominal injuries. Based upon Dr. Nobis' affidavit, there was no qualified surgeon on board the ship involved. Under the circumstances therefore, there was not only no alternative to the action taken in recommending the patients remain ashore for observation, but such action was mandatory. No onenot present could

contradict that decision pursuant to accepted medical practice.

s/ Howard Balensweig, M.D.

Sworn to before me this 25th day of September, 1974

Gerri L. London Notary Public Affidavit of Dr. Rodolfo Nobis In Support of Motion

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Same Title

STATE OF NEW YORK :

: SS.:

COUNTY OF NEW YORK:

DR. RODOLFO NOBIS, being duly sworn deposes and says:

I am a doctor of medicine, licensed to practice under the laws of Italy, and am currently employed as a physician on board the Italian Line vessel, the S.S. RAFFAELLO.

On December 30, 1969, I was employed by Italian Line as one of two doctors on board the S.S. LEON-ARDO DA VINCI, On that date the vessel was docked off Montego Bay, Jamaica, W.I. I was informed that the Metzger Family (Father, Ralph, Jr.; Mother, Adele and son, Ralph III) who were passengers on our vessel were injured in a taxi accident on shore. I immediately made arrangements to visit them at the hospital in Falmouth and conferred there at the hospital with Dr. Berry who had treated the Metzgers. An ambulance was waiting, but Dr. Berry informed me that the cases were too complicated to take the passengers back on the ship. The

Affidavit of Dr. Rodolfo Nobis In Support of Motion

son, Ralph Metzger, III, had suffered abdominal contusions and pain and becarse of the possibility of abdominal surgery, Dr. Berry said he should be transferred
to St. James Hospital at Montego Bay. I definitely
agreed with Dr. Berry's decision concerning the boy and
believed it would be more convenient and comfortable
also for Mrs. Metzger to continue with treatment ashore
at St. James Hospital.

Both the other doctor on board the LEONARDO DA VINCI and I were general practitioners and neither of us was a qualified surgeon. The ship's hospital was equipped for first aid, emergency treatment or for illness of short duration. The ship was not equipped for abdominal surgery. When I learned of the abdominal complaints of the boy from his father and Dr. Berry, I was in complete agreement that he should not be returned to the vessel with its limited facilities, but should remain ashore for observation of his condition and eventual surgery if required. Additionally, because of the physical problem of transportation back to the vessel and its movement while underway, I also agreed it would be better if Mrs. Adele Metzger were also to be treated ashore at the St. James Hospital at Montego Bay, Jamaica, This statement is given of my own free will as a physician based upon my medical opinion and I am still of the

Affidavit of Dr. Rodolfo Nobis In Support of Motion

opinion the boy and his mother should have remained on shore for treatment and observation under the circumstances.

s/ Rodolfo Nobis

Sworn to before me this 17th day of April, 1974

Benjamin Boyd Notary Public Affidavit of Dr. Ronald K. Berry In Support of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------X

Same Title
-----X

SOVEREIGN STATE OF JAMAICA

PARISH OF SS.:
TOWN OF

RONALD K. BERRY, being duly sworn, deposes and says:

I, Ronald K. Berry, am a doctor of medicine and employed as medical officer of the Falmouth Hospital in Jamaica, West Indies. On 30 December 1969, the Metzger family consisting of the father, Ralph Metzger, Jr., his wife Adele Metzger, and the son, Ralph Metzger, III were seen by me at the Falmouth Hospital. I examined and initially treated these patients who had been involved in an automobile accident on that date.

The boy, Ralph Metzger, III, complained of abdominal pain following the accident on that day, and in view of the possibility of intra-abdominal injuries (possible ruptured spleen) necessitating surgical treatment, I recommended transfer to the Surgical Unit at St. James Hospital in Montego Bay for observation. I conferred with and was informed by Dr. Nobis of the SS LEONARDO DA VINCI, on which the Metzgers were passengers,

de AMERICA

Affidavit of Dr. Ronald K. Berry In Support of Motion

that there were limited surgical facilities on board the vessel and no qualified surgeons. In view of the abdominal injuries therefore, I did not think it wise that the patient, Ralph Metzger, III, should return home on the ship which was leaving Jamaica on that same day.

s/ Ronald K. Berry

Sworn to before me this 17th day of April, 1974

Notary Public

Affidavit of Dr. Harland C. Hastings In Support of Motion

UNITED STATES DISTRICT CO SOUTHERN DISTRICT OF NEW						
	<u>.</u> .		-	-	-	X
Same Title						
			-	-	-	X
PROVINCE OF NOVA SCOTIA COUNTY OF GUYSBOROUGH	}	99				
COUNTY OF GUYSBOROUGH	5	35	• •			

DR. HARLAND C. HASTINGS, M.B., CH.B, MRCP, FRCP, FACP, FICS, being duly sworn, deposes and says:

I am a doctor of medicine and presently a member of the staff of Guysborough Hospital, Guysborough, Nova Scotia, Canada, and make this affidavit concerning my knowledge of the Metzger Family and their injuries following a motor vehicle accident which occurred in Jamaica, on or about 30 December, 1969. On that date, I was a physician on the staff of St. James Public General Hospital in Montego Bay, Jamaica, West Indies.

Mr. Ralph Metzger, Jr., whom I understood to be the husband and father of the family, was admitted to St. James Hospital on 30 December 1969. He had pain in the right shoulder, lacerations lateral to the right eye and lacerations in the left knee area. Mr. Metzger had bruises of the thigh and on that same day was taken to the hospital operating theatre and his face and knee areas were sutured.

Affidavit of Dr. Harland C. Hastings In Support of Motion

Mrs. Adele Metzger, whom I understood to be the wife and mother in the Metzger family, was admitted to St. James Hospital on 30 December 1969. She exhibited a deformity of the right upper leg. X-ray examination showed an oblique fracture of the upper third right femur.

Ralph Metzger, III, (a boy, aged 11) whom I understood to be the son of Ralph and Adele Metzger, was admitted to St. James Hospital on 30 December, 1969 with many lacerations of his face and right hand. He also suffered from bruises of the abdomen and was treated for shock. He was taken to the operating theatre where multiple lacerations of the face and right hand were cleaned and sutured.

My medical opinion and advice concerning these cases was as follows: Mrs. Adele Metzger was not advised to move further until her leg was properly x-rayed and immobilized to make transportation comfortable. It was not advisable, in my opinion, that she be repatriated by ship on the date of the accident. With regard to Ralph Metzger, III, (son), he was not in good shape for movement and best left in St. James Hospital for observation and surgical care if needed. There were no qualified surgeons on board the S.S. LEONARDO DA VINCI I understood, and it therefore would not have been wise to

in Opposition to Motion

Affidavit of Dr. Harland C. Hastings In Support of Motion

place the boy on board for a trip back to the States because of the danger of internal injuries which might require abdominal surgical intervention. Expert surgical care was available at St. James Hospital in Jamaica.

In my medical opinion, the best thing for the patients, Adele Metzger and Ralph Metzger, III, was to let them remain at St. James Hospital at Jamaica for treatment and observation and not to send them back on board ship which was leaving the same day. I thought that any other way of handling these cases would have caused great distress to these patients. Particularly in the case of the boy, Ralph Metzger, III, it would have been dangerous in the event abdominal surgery was required on board ship without a qualified surgeon in attendance.

s/ H. C. HASTINGS

Sworn to before me this 17th day of April, 1974

Notary Public

Affidavit of Paul Edmund Levy

Jamaica
City of Kingston
Embassy of the United States
of America

- I, PAUL EDMUND LEVY being duly sworn Make Oath and say as follows:
- 1. My true place of abode is at 31 Hopefield Avenue, Kingston 6, Jamaica, W.I. My postal address is at 20 Duke Street, Kingston, Jamaica, W.I. and I am an Attorney-at-law of and for the Supreme Court of Judicature of Jamaica of over 13 years standing.
- 2. The subject of the Road Traffic Law Cap. 346 and Regulations made thereunder are matters which are within the ambit of my regular legal practice.
- 3. The Road Traffic Law Cap. 346 provides that all persons driving motor vehicles on the roads of Jamaica is required to be the holder of a license for the purpose. There are three types of licenses appropriate for the driving of motor vehicles viz:
 - (a) Private Drivers' Licenses
 - (b) General Drivers' Licenses
 - (c) Motor Cycle Drivers' Licenses
- 4 (a) A private driver's license entitled the holder thereof to drive, not for reward, (hire) "trucks, "motor cars" (not being public passenger vehicles or commercial

In Opposition to Motion

Affidavit of Paul Edmund Levy motor cars) and "invalid carriages".

- (b) A general driver's license entitled the holder thereof to drive, whether for reward (hire) or otherwise, such class or classes of motor vehicles as may be specified in the license and which his examination test or tests prove him competent to drive.
- 5. The pre-requisites to the grant of driver's license of either of the above types are set out in Section 14 (1) of the said Law and I exhibit hereto a photoprint copy of the said Section. It will be observed that the only distinctions in the pre-requisites between a general and a private license are to be found in subparagraphs (iv) and Vi) and (vii) and that these relate solely to age and physical fitness.
- Section 14 (1) of the said Law is dealt with in the Road Traffic Regulations made under the said Law. Copies of Regulations 42 44 are exhibited hereto. It will be seen that in order to obtain a certificate of competence the applicant has to comply with Regulation 43 (1) to (6). It will be seen that the only requirements for an applicant for a general driver's license (for hire or public conveyance) which are more onerous or testing or more strict than in the case of a private driver's license are set out in Regulations 43 (4) (1)

Affidavit of Paul Edmund Levy and that there is no distinction in terms of actual competence or ability to drive the vehicle but merely in terms of the driver's mechanical knowledge.

7. The exhibits hereto are part of the Laws of Jamaica which are in force at the present time and which were in force in the year 1969.

Paul Edmund	d Levy
-------------	--------

Sworn to at the Embassy of the United)
States of America
The City of Kingston, Jamaica

This 5th day of September, 1974

Before me:

James A. Smith
Consul the United States of America.

(SEAL)

Exhibit - Part of Traffic Laws of Jamaica Annexed to affidavit of Paul Edmund Levy

ROAD TRAFFIC.

[OAP. 243.

14 .- (1) A Licensing Authority shall not grant a Prerequisites driver's licence unless the applicant for the licence pays to of a driver's the Licensing Authority a fee of one pound and unless the applicant produces to the Authority a certificate (in this 7/1961. law referred to as a "certificate of competence") in the prescribed form, from the Traffic Area Authority in whose Traffic Area is situate the Licensing Area, certifying that + Warren 7 DR \$134 the applicant-

licence. for case on this Section see Que Ingitim

- (i) is able to read and write in English;
- (ii) has complied with the provisions of this Law and the regulations made thereunder and paid the fees prescribed for a driver's test and, has passed or has been exempted from, such test and, where the applicant is a chauffeur has passed, or has been exempted from, a test of his mechanical knowledge:
- (iii) is at least seventeen years of age, or in the case of an applicant for a motor cycle driver's licence that he is at least of that age;
- (iv) in the case of an applicant for a general driver's licence to drive a public passenger vehicle, has attained the age prescribed for the holding of such a licence;
- (v) has produced to the Traffic Area Authority, a certificate from a Justice or a Superintendent or Assistant Superintendent of Police in the area in which the applicant resides, in the prescribed form certifying that he is a fit and proper person to be the holder of a driver's licence;
- (vi) in the case of an applicant for a private driver's licence, or for a motor cycle driver's licence, has made a declaration in the prescribed form that he is not suffering from any such disease or physical - disability as may be specified in the form, or any other disease or physical disability which would be likely to cause the driving by him of a motor

Exhibit - Part of Traffic Laws of Jamaica Annexed to affidavit of Paul Edmund Levy

CAP. 346.1

ROAD TRAFFIC.

vehicle, being a vehicle of such class or description as he would be authorized by the licence to drive, to be a source of danger to the public;

(vii) in the case of an applicant for a general driver's licence has produced to the Traffic Area Authority a medical certificate from a registered medical practitioner, in the prescribed form, certifying that he is not suffering from any such disease or physical disability as may be specified in the form, or any other disease or physical disability which would be likely to cause the driving by him of a motor vehicle, being of such class or description as he would be authorized by the licence to drive, to be a source of danger to the public:

Provided that the provisions of this subsection (other than the provision for the payment of the licensing fee) shall not apply to a person making only a temporary stay in Jamaica if he produces to the Traffic Area Authority a driver's licence issued to him not longer than twelve months before by the competent Authority in the country from which he comes:

Provided further that the licensing Authority may in any case require the holder of such a licence to comply with all or any of the provisions of this subsection.

(2) If any person for the purpose of obtaining the grant of any licence to himself or any other person, or for the purpose of obtaining a certificate of competence, knowingly makes any false statement or withholds any material information, he shall be guilty of an offence and shall be liable to a penalty not exceeding twenty-five pounds, and in default of payment thereof to imprisonment, with or without hard labour, for any period, not exceeding three months, or, in the discretion of the Court, to imprisonment, with or without hard labour, for any period not exceeding three months.

[CAP. 346.

141. Notwithstanding anything in this Law to the con- Order under trary, the provisions of sections 12, 13 and 14 of this Law Law. hall not apply to any citizen of the United States of Cap. 300. America when driving any motor vehicle belonging to the 10.8. 8 of Government of the United States of America.

15. -- (1) A person shall be disqualified for obtaining a Disqualificadriver's licence-

- (a) while another licence of the same class granted to driver's licence. him is in force, whether the licence is suspended
- (b) if he is by a conviction under this Part of this Law or by an order of a Court under this Part of this Law disqualified for holding or obtaining a driver's licence.
- (2) In any proceedings the fact that a driver's licence has been granted to a person shall be evidence that that person for the purpose of obtaining that licence made a declaration or produced a medical certificate, as the case may be, that he was not disqualified for holding or obtaining the licence.
- 16. -(1) Where a Licensing Authority refuses to grant Provisions a driver's licence of any class on the ground that the applicant is suffering from any such disease or disability as is applicants for mentioned in paragraphs (vi) and (vii) of section 14 of this drivers licences. Law-

- (a) the Licensing Authority may grant to the applicant a licence limited to drive an invalid carriage if the Traffic Area Authority in whose Traffic Area is situate the Licensing Area certifies to the Licensing Authority that the applicant is fit to drive such a carriage;
- (b) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive

EXHIBIT 1 - REVERSE SIDE OF DR. BERRI'S CARD

AMAICA
SIT OF XIMESTON
EMBASSY OF THE UNITED STATES)
OF AMERICA

This is the photoprint copy of Section 14 of the Road Traffic Law Chapter 346 mentioned and referred to in Paragraph 5 of the Affidavit of Paul Edmund Levy.

SWORN to at the Embassy of the United)
States of America :
in the City of Kingston, Jamaica)
this 5th day of September 1974)

before me:-

/ James A. Smith;

Consul of the United States of America.

Exhibit - Part of Traffic Laws of Jamaica Annexed to affidavit of Paul Edmund Levy and make any relevant declaration specified on the Form "F1" of the Schedule in the case of an applicant for a Private Driver's Licence or a Motor Cycle Driver's Licence and on the Form "F2" of the Schedule in the case of a General Driver's Licence. 42—(1) The applicant for a driver's licence shall furnish to the Licensing Pre-requisites
Authority a "Certificate of Competence" on the Form "G1" to the grant from a Traffic Area Authority situated in the Area of the of a Licence. Licensing Authority. (2) The fee of 10/- prescribed in Section 14 (1) of the Law shall Driver's be paid before the applicant is entitled to receive a Driver's Licence fee. Licence. (3) The applicant shall furnish two photographs of himself taken Photograph. not more than six months before making the application. 43-Any person who desires to obtain a Certificate of Competence in accordance with section 14 (1) of the Law shall:-(1) Produce to the Traffic Area Authority a Certificate of Character Certificates in accordance with subsection (1) (v) of section 14 of the Law of Comon the Form "F3" of the Schedule in the case of an applicant peterce. for a Private Driver's Licence; or in the case of an applicant for a General Driver's Licence on the Form "F4" of the Schedule. (2) In the case of an applicant for a Private Driver's Licence or a Motor Cycle Driver's Licence make a declaration in accordance with subsection (1) (vi) of Section 14 of the Law on the Form "F5" of the Schedule and in the case of an applicant for a General Driver's Licence produce a Medical Certificate in accordance with subsection (1) (vii) of section 14 of the Law on the Form "F6" of the Schedule. (3) Satisfy on test any Member of the Traffic Area Authority or any Certifying Officer that he is capable of driving a motor vehicle or a motor vehicle of the particular class, construction or design to which the application relates without danger to other users of the road, and in the case of an applicant for a General Driver's Licence satisfy the Certifying Officer of his mechanical knowledge. (4) In order to pass such aforesaid test prove to the Certifying (i) In the case of an applicant for a General Driver's Licence that he (a) has a general knowledge of the functions of a combustion engine: (b) knows the use of the carburettor, brakes, gear box electrical apparatus, generator, battery and coil. (c) is able to effect minor repairs: (d) is familiar with the usual loose tools carried on a motor vehicle and their use: and (ii) In the case of any applicant his ability unaided to:-(a) start the vehicle from rest, to move away in a reasonably quick time and to maintain an accurate course: (b) turn right and left hand corners correctly; 72a

Exhibit - Part of Traffic Laws of Jamaica Annexed to affidavit of Paul Edmund Levy

ROAD TRAFFIC.

[OAP. 346.

14. Notwithstanding anything in this Law to the con- Order under trary, the provisions of sections 12, 13 and 14 of this Law Law. hall not apply to any citizen of the United States of Cap. 393. America when driving any motor vehicle belonging to the 1913. Government of the United States of America.

15. -- (1) A person shall be disqualified for obtaining a Disqualificadriver's licence-

- (a) while another licence of the same class granted to driver's him is in force, whether the licence is suspended
- (b) if he is by a conviction under this Part of this Law or by an order of a Court under this Part of this Law disqualified for holding or obtaining a driver's licence.
- (2) In any proceedings the fact that a driver's licence has been granted to a person shall be evidence that that person for the purpose of obtaining that licence made a declaration or produced a medical certificate, as the case may be, that he was not disqualified for holding or obtaining the licence.
- 16. -(1) Where a Licensing Authority refuses to grant Provisions a driver's licence of any class on the ground that the appli- physical fitcant is suffering from any such disease or disability as is applicants for mentioned in paragraphs (vi) and (vii) of section 14 of this drivers Law-

- (a) the Licensing Authority may grant to the applicant a licence limited to drive an invalid carriage if the Traffic Area Authority in whose Traffic Area is situate the Licensing Area certifies to the Licensing Authority that the applicant is fit to drive such a carriage;
- (b) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive

Exhibit - Part of Traffic Laws of Jamaica Annexed to affidavit of Paul Edmund Levy

- (c) stop the vehicle within a reasonable distance when travelling at various speeds. (In this respect he must satisfy the Certifying Officer that in an emergency he will be able to apply the brakes, promptly and effectively;)
- (d) operate all controls with safety and without moving from the driving seat;
- (e) give all recognised signals to other persons using the road and to traffic controllers in a clear and unmistakable manner. (If, owing to his disability, it is impracticable or undesirable that he should give such signals by hand, the vehicle must be fitted with a device or devices which in the opinion of the Certifying Officer will be satisfactory for this purpose;)
- (f) except in the case of a motor cycle, make the vehicle proceed backwards for a reasonable distance, make a left and right hand turn in reverse gear, and back the vehicle into an indicated position;
- (g) turn the vehicle round so as to proceed in the opposite direction in a space 30 feet in width;
- (h) stop, hold and start the vehicle on a gradient.
- (iii) that he is conversant with the "Road Code".
- (5) Pay a fee of 5/- to the Licensing Authority as required by subsection 1 (ii) of section 14 of the Law.

No examination shall be carried out until the applicant has produced a receipt from the Licensing Authority evidencing the payment of the fee. In the event of any applicant failing any required test a further fee of 5/- shall be paid in respect of each subsequent examination.

(6) A Traffic Area Authority shall issue a Certificate of Competence on the Form "G1" of the Schedule, to any person who has satisfactorily complied with the requirements of the Law and the Regulations made thereunder.

44—If on the first application for the grant of a Driver's Licence to a person who at the commencement of the Law is the holder of a Driver's Licence under any Law repealed by the Law and the applicant produces his previous driver's licence and shows that for the six months immediately preceding his application he has been in the habit of driving a motor vehicle of any such class construction or design to which his application relates he may be exempt from the test as required by Regulation 43 hereof and the fee prescribed in Regulation 43 (5) shall not be payable by such an applicant whether tested or not.

Driver's

- 45—(1) A licence granted under the Law shall be in the case of a Private Driver's Licence on the Form "H1" in the case of a General Driver's Licence on the Form "H2" in the case of a Motor Cycle Driver's Licence on the Form "H3" of the Schedule to which shall be attached a photograph of the person licensed.
- (2) Where the licence is limited to the driving of any class of motor vehicle or to the driving of a motor vehicle of a particular construction or

MANAGE TO ENERGION ENGASSY OF THE UNITED STATES) AF AMERICA

This is the photoprint copy of Regulation 42 - 44 made under the Road Traffic Law mentioned and referred

to in Paragraph 6 of the Affidavit of Yaul

SWORN to at the Embassy of the United States of America Kingston, Jamaica in the City of Kingston, Jamaica

this 5th day of September 1974

before me:-

James A. Smith,

Consul of the United States of America.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant under 14 by his parent, Ralph Metzger, Jr.,

Plaintiffs, 70 CIVIL 5629 (R.O.)

:

-against-

THE ITALIAN LIEN

Defendant.

STATE OF NEW YORK :

: SS,:

COUNTY OF NEW YORK:

ADELE METZGER, being duly sworn, deposes and says:

I am one of the plaintiffs in the above entitled action and I make this affidavit in opposition to the motion for summary judgment of the defendant. There are genuine issues as to material facts as will appear from my affidavit.

I sustained an injury to my leg in the automobile accident ashore on December 30, 1969 on the island of Jamaica, West Indies on a road from the Port of Montego Bay to Ocho Rios. I was taken to the Falmouth "Hospital". In fact, the "hospital" was nothing more than a tiny Dispensary which consisted of a one story building in which were contained two wards, a woman's wardand a men's ward.

DVUTDII

The woman's wardwas one room with ten beds in it. It was surrounded by a six foot high wall over which was a roof with open space between. Dr. Ronald K. Berry took no x-rays, made a visual examination of my leg and said to me that he knew my right leg was broken by looking at my right femur. That there would be no trouble in getting me back to the ship. All the ship had to do was give me something for some pain, use a splint and have an ambulance meet the ship in New York on Friday as scheduled.

Dr. Berry looked at my son and at no time did he state to me or to my husband, as will appear from my husband Ralph Metzger Jr.'s affidavit, that it would be necessary to remain at any hospital, but rather there would be no problem going aboard the ship and being returned to the United States. Dr. Berry at no time mentioned to me any possibility of any possible ruptured spleen and indeed, from the brief diagnosis which he wrote on the back of his professional card concerning me, as well as my son, and which he gave to my husband, copy of which is annexed hereto and made a part hereof as plaintiffs' Exhibit 1. The key symptom, namely shock, is definitely stated by Dr. Berry to be absent in his examination of my son Ralph Metzger, III in the language "not shocked at present" which

Allidavit of Kalph Metzger, Jr.

Affidavit of Adele Metzger In Opposition to Motion

appears on Exhibit 1.

Indeed, before the arrival at Falmouth of Dr.

Nobis, who had returned with my husband after my husband had received first aid attention at Falmouth and had gone to the ship at Dr. Berry's suggestion, Dr. Berry had obtained an ambulance, had placed my son in it, and had gotten me ready to go into it, with the express stated purpose for my son and me to join my husband to return to the ship and not to be sent to any St. James Hospital.

It was only when Dr. Nobis informed Dr. Berry that he, Dr. Nobis had refused to take the Metzgers back on board the vessel, that the only alternative for Dr. Berry was to have me and my scn transported to the St. James Hospital at Montego Bay.

It is interesting to note that Dr. Berry's affidavit concentrates on and only refers to the recommended
transfer of my son to the surgical unit at St. James Hospital in Montego Bay for observation and states that he
recommended it, but he makes no mention of recommending
any cast to be applied to me, which in fact was done
three days later at the St. James Hospital, on Friday,
the very day the ship would have arrived in New York. There
was no conversation in my presence between Dr. Nobis and
Dr. Berry.

At no time did Dr. Nobis ever examine me or my son. It is peculiar that Dr. Berry would state that he was informed by Dr. Nobis that there was no qualified surgeon aboard when the title carried by Dr. Nobis in the listing in the document called Passengers List for this voyage of the Leonardo Da Vinci, clearly shows that Dr. Nobis was listed as Chief Surgeon and indeed he had a surgeon underneath him by the name of Luigi Guardincerri as appears from a photocopy of the cover, the first page and the second page of the Passenhers List for this voyage and marked plaintiffs' Exhibits 2a, 2b and 2c.

In addition, there is attached hereto a copy of that portion of the upper deck which contains the entire hospital facilities and the translation will be furnished to the Court, and this is marked plaintiffs' Exhibit 3 for identification.

Dr. Nobis in which he states that Dr. Berry informed him, Dr. Nobis that the cases were too complicated to take the passengers back on the ship, I was not present at any conversations between Dr. Nobis and Dr. Berry, but my husband was and the response to this misstatement of fact will be by my husband. I can only state that the purpose of the ambulance which Dr. Nobis refers to, was told to me by Dr. Berry to be for the purpose of transporting my son and my-

self to the ship. Dr. Berry mentioned no hospital when he provided the ambulance. Dr. Berry stated in no uncertain terms that my comfort and convenience would certainly be well provided for on the vessel. Dr. Berry made no decision concerning my son.

For Dr. Nobis to admit that as a general practitioner he would not be qualified to do any surgery, certainly is a deception of the worst type, since the passenger list, Exhibit 2c, clearly indicates that he is not only the surgeon but the chief surgeon aboard the vessel. In addition, a perusal of the passenger list indicates that there were a number of doctors aboard the vessel on this cruise and it would have been a simple matter to provide for the contingency of an emergency by checking out the passengers doctors qualifications, if Dr. Nobis felt that he was not a qualified surgeon. In the light of the treatment or the lack thereof received by my son and myself at St. James Hospital, Dr. Nobis' words that it would be better of Mrs. Adele Metzger were also to be treated ashore and that my son should "remain ashore for observation" are ironic and a total misstatement of fact. Dr. Nobis uses the words "I was in complete agreement." At no time did anyone state that there was any decision for my son and myself to go to the hospital. Dr. Nobis had made the decision as will appear from my husband's affidavit, to refuse to permit us to return with the vessel.

I refer to the treatment or lack of treatment at the St. James Hospital. Let me just briefly state what happened there to me and my son. First of all to me: the accident occurred on December 30, 1969, a Tuesday. On the third day, Thursday, I was x-rayed. On Friday, a plaster cast was placed on my leg. This plaster cast was so inexpertly placed on my leg, that when we arrived at Passaic, New Jersey at the hospital, one week later, the cast was still wet and caused indescribable discomfort to me and great difficulty with the surgeon who removed the cast and had to reset the leg because of the poor medical treatment received at the St. James Hospital. For the final three days of my stay at St. Jame. Hospital my husband, replacing the nurses we had hired through the hospital, took care of my personal needs, including bed pan and feeding. At no time did the hospital provide any general duty nurses or nursing care to me.

The recital of the above facts certainly contradicts the affidavit of Dr. Harland C. Hastings wherein the
doctor states that "expert surgical care" was available
at St. James Hospital. Dr. Hastings at no time spoke to
Dr. Nobis and was therefore unaware of any of the conditions aboard the vessel and this is evident even in his
affidavit where he uses the avoidance language by saying

"there were no qualified surgeons on board the S. S.

Leonardo Da Vinci I understood". This is far from first hand information and without the knowledge of the conditions on board the ship as compared to those at the hospital, Dr. Hastings could in no way draw a conclusion as to whether my son and myself would have suffered greater distress at the hospital or on the ship.

As far as observation of my son is concerned, for all the concern which Dr. Hastings endeavors to portray in his affidavit, my son was not in shock at the hospital. Indeed he was ambulatory. He was permitted to go outside the hospital grounds with his father to purchase food so that they could have an adequate diet and he was walking around constantly without being attended to by any physician or nurse while he was supposed to have been observed for the possibility of intra-abdominal injury.

I have set forth above the material facts concerning which there is a genuine issue as between myself, my son and my husband as plaintiffs and the defendant as presented by the affidavits of the defendant's physicians.

With respect to the affidavit of Dr. Howard Balensweig, I would only point up that the affidavit is one opinion which is not based upon fact but upon records and includes speculation such as "the cast probably weighed another"

that I could go aboard the vessel with merely a splint and upon arrival at New York could be transported by ambulance and that a cast was not necessary. Dr. Balensweig accepts the affidavit of Br. Nobis that there was no qualified surgeon aboard the ship. This at best is merely a reiteration of what another person has said. Dr. Balensweig had no personal knowledge concerning this material fact.

The second area of issue between the plaintiffs and the defendant is whether there was any negligence on the part of the vessel which was a preximate cause or a concurrent proximate cause of the injuries sustained. This of course is a legal issue and the facts concerning the cruise and the duties and responsibilities of the social director of the vessel on this cruise and the custom and practice of cruise ships, will be set forth in detail in my husband's affidavit, in which I concur and for me to repeat the statements of fact here in this affidavit would be redundant.

Likewise, I concur in the statements in my husband's affidavit concerning the ship's agent Fletcher & Company, Ltd. at Montego Bay and the factual data concerning the taxi hire.

I have set forth above material facts which are the basis of genuine issues between myself, my son and my husband as plaintiffs and Italian Line as defendant and I respectfully pray that this Court deny the motion for summary judgment made by the defendant.

Adele Metzger

(Duly Sworn to on November 11, 1974.) EXHIBIT 1 - REVERSE SIDE OF DR. BERRY'S CARD - ANNEXED TO AFFIDAVIT OF ADELE METZGER

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EXHIBIT 1a - FACE SIDE OF DR. BERRY'S CARD ANNEXED TO AFFIDAVIT OF ADELE METZGER

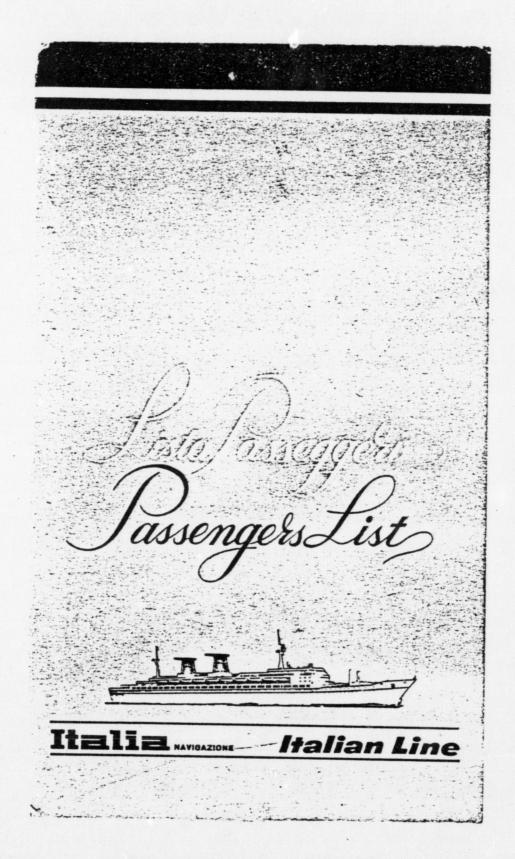
PRIVATE 250

DR. RONALD K. BERRY M.B., S.S. (Lone.) F.R.C.S. (EGIN.)

SURGEON

JAMAICA, WEST INDIES

EXHIBIT 2a - FACE OF PASSENGER LIST - ANNEXED TO AFFIDAVIT OF ADELE METZGER



ITALIAN LINE

S/S "LEONARDO DA VINCI"



PORTS OF CALL

NEW YORK	Dec. 20th, 1969
SAN JUAN, PR.	Dec. 23rd, 1969
ST. THOMAS	Dec. 24th, 1969
CURACAO	Dec. 26th, 1969
CRISTOBAL	Dec. 28th, 1969
MONTEGO BAY	Dec. 30th, 1969
NEW YORK	Jan. 2nd, 1970

4

West Indies Festival Cruises

EXHIBIT 2c - CAPTAIN AND STAFF - ANNEXED TO AFFIDAVIT OF ADELE METZGER

MARIO CASTAGNINO

Captain

BRIDGE

MARIO GAZALE

Staff Captain

ENGINE

ANTONIO BEISO

Chief Engineer

OSCAR MANTERO

Ass't Chief Engineer

PURSERS

LIBORIO LIGUSTRI

Chief Purser

ALCESTE MANNUCCI

First Purser

HEALTH SERVICE

RODOLFO NOBIS

Chief Surgeon

LUIGI GUARDINCERRI

Surgeon

RELIGIOUS SERVICE

Mons. LUIGI FLORAN

BANKING SERVICE

LUIGI RUSSO

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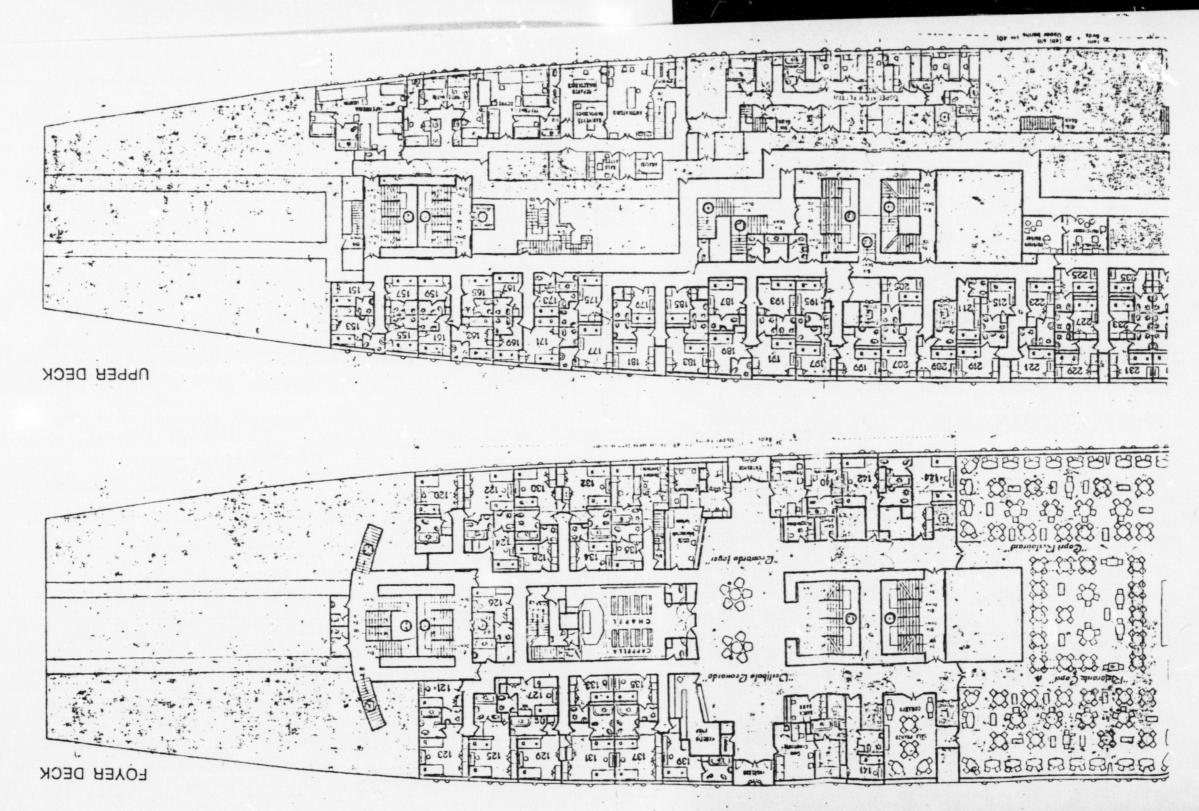


EXHIBIT 4 - CRUISE STAFF - ANNEXED TO AFFIDAVIT OF ADELE METZGER

CRUISE STAFF

Mr. JACK SCORDLEY
Cruise Director

Mr. Rosalbo LOTTERO - Mr. Sandro RESMINI
Ass't. Cruise Directors

Mrs. Beatrice Horgan COSULICH · Mrs. Carlotta PIRO Hostesses

Mr. & Mrs. Joan VIGDOR Bridge Instructions

> Mr. Michael METZ Stock Analyst

Mr. John CONSIGLIO Golf Pro

Mr. Jerome MAYER Lawyer

Mr Rod FISHER - Mr. Robert RUTKOWSKI

Mrs. Carol RICHARD

Child Counsellors

NINO PEZZINO Maitre d'Hotel AMERIGO BRAGLIA 2nd Maitre d'Hotel

ETTORE COLOMBIN Chef de Cuisine

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER, III, an infant : under 14 by his parent, Ralph Metzger, Jr., :

Plaintiffs: 70 CIVIL 5629 (R.O.)

-against-

THE ITALIAN LINE

Defendant.

STATE OF NEW YORK :

: SS .:

COUNTY OF NEW YORK:

RALPH METZGER, JR., being duly sworn, deposes and says:

I am one of the plaintiffs in the above entitled action and make this affidavit in opposition to the motion for symmary judgment made by the defendant.

I have read and concur in the statement of facts presented by my wife in her affidavit sworn to the 11th day of November, 1974 and I shall not repeat the facts which we share in common. However, there were certain facts which I am aware of and I shall confine myself to setting forth those material facts.

At the Falmouth "Hospital" I personally spoke to Dr. Berry while I was in the men's ward and he stated to me

that he knew that my wife's right leg was broken by looking at the right femur. That there was no problem in getting her back to the ship. That all the ship had to do was get something for the pain and use a splint and then get an ambulance in New York on Friday upon arrival. Dr. Berry continued the onversation with me and referring to my son, Dr. Berry said the best bet is for you to go back to the ship. I will put your son and wife in an ambulance to go to the ship. In the meantime, find out if there is a surgeon and telephone me and I will send them to the ship. Dr. Berry made no mention of any abdominal injuries or potential ruptured spleen or that my son was in any way suffering from shock or potential shock. As a matter of fact, what he did at my request, is give me his card, on the back of which he wrote the temporary diagnosis, which has been photostated and attached to my wife's affidavit as plaintiffs' Exhibit 1 which I incorporate by reference herein.

When I got to the ship, Dr. Nobis met me there and said "pack your bags you are not going back to the United States by ship." He told me he was going to see Dr. Berry at Falmouth which was a short distance from Montego Bay where the ship was. In the meantime, Dr. Nobis gave instructions to have my baggage placed on the dock. I protested that I wished to go aboard the ship and that Dr. Berry

said it was alright. Dr. Nobis said that he would not permit us to go aboard the ship. He then went with me to Falmouth. He did not examine the patients, either my wife or my son. He did not know the extent of any of the injuries. Je did not ask Dr. Berry whether it would be alright to take them to the ship. He stated that the ship would not take the Metzger family to the United States.

I was present when Dr. Nobis spoke to Dr. Berry and at no time did Dr. Berry say to Dr. Nobis that the cases were too complicated for the ship. At no time did Dr. Berry ever say that the patients must be transferred to St. James Hospital in Montego Bay. At no time did I ever tell Dr. Nobis that my son had any abdominal complaints. The ambulance went to St. James Hospital in Montego Bay. Dr. Hastings at St. James Hospital never spoke to Dr. Nobis. When I got back to the pier with Dr. Nobis from Falmouth, our baggage was on the pier and for the first time Mr. Fletcher of Fletcher & Company, Ltd., the ship's agent, joined us on the Fletcher & Company wharf which was the place where the ship launch tied up. It was then that Mr. Fletcher was introduced to me.

I might point out that at no time did Dr. Hastings tell me that my wife and son should not go back to the ship.

I just would like to state that on the Thursday that we were at the St. James Hospital I walked out of the

hospital with my son who had been walking around Tuesday and Wednesday with nobody watching over him to care about his potential internal bleeding. We went off the grounds to a place to eat and then returned. No doctor, no nurse gave us any word ow warning or even apoke to us or even knew that we had left the premises. This was the careful observation referred to by Dr. Hastings.

With respect to the cruise customs and procedures aboard cruise vessels, I am familiar with these because we have taken other cruises and the patterns do not vary very much.

In order to have a better understanding of the background of this cruise, I should like to set forth the itinerary and what took place basically during the course of the voyage. The ship left New York on December 20, 1969. Arrived at San Juan on December 23rd; arrived at St. Thomas on December 24th; arrived at Curacao on December 26th; arrived at Cristobol - Panama CaralZone December 28th; arrived at Mongego Bay, Jamaica, West Indies December 30th and was to sail the same day for New York for arrival on January 2, 1970 at 8:00 A.M.

On board the vessel SS Leonardo Da Vinci there was a Cruise Director named Jack Scordly and two assistant cruise directors who were part of the cruise staff, plain-

tiffs' Exhibit 4, taken from the Passenger List. The routine of Cruise Director Scordley was that at 10 A.M. in the auditorium, as a regularly scheduled program item, they would have a lecture on port information. The lecture would often include slides and the Cruise Director would tell about the sites to see, the places to shop, the items to purchase and the places and things to stay away from. People would ask questions concerning liquor, cameras, swimming, foods, good and bad. The tours which are offered by the ship are offered at the beginning of the voyage on the first night and they must be purchased and payment made and they are usually closed by the time the lecture commences several days later. It is the custom and practice on cruise ships to discuss and warn the passengers concerning places that are safe, habits of taxi personnel, safe and unsafe and other items which would be of mutual benefit to the vessel and the passengers because this is not a ship that goes from one destination to another as a simple transportation situation but rather is for the pleasure of going from place to place and this is constantly repeated in the ship's information lecture and was repeated by Cruise Director Scordley on the Leonard Da Vinci. The lecture for Cristobol and Montego Bay were given at the same time. The ship's Gruise Director Scordley advised that the ship's

tour for Montego Bay would be an all day affair to Ocho Rios which would permit exactly two hours of swimming, exactly one hour for lunch and exactly two hours for shopping, no more, no less and that all passengers must stay with the ship's tour. Of course at all times it is always and has always been the custom of not insisting on the ship's tour because (1) the tours are sometimes sold out before the lectures are given and before the arrival at the port and (2) because people do not necessarily wish to go or be bound by a rigid tour schedule. In our case, we did not wish to go swimming that day. We wished to shop at our leisure. There was a particular shop in Montego that we went to and heard about and the tour was not going to this place. We went ashore by taking the ship's tender, a launch which is owned by the Italian Line to the port pier at Mongego Bay which is at Fletcher's Wharf which is owned and operated by Fletcher & Company, Ltd., the ship's agents for this defendant.

The Fletcher's wharf is an enclosed fenced in wharf and the taxis, both licensed and unlicensed are at the fence. At no time did the Cruise Director Jack Scordley mention the distinction between types of cabs ashore in Montego Bay to be found at Fletcher's Wharf.

I therefore join in the application of my wife on

behalf of myself, my wife and my son and ask this Court to deny the defendant's motion for summary judgment since there are genuine issues as to material facts.

RALPH METZGER, JR.

(Duly sworn to on November 11, 1974.)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

- -X

Same Title

- X

STATE OF NEW YORK) SS.:

FRANK W. STUHLMAN being duly sworn deposes and says: I am an attorney at law, a member of the firm of Kirlin, Campbell & Keating, attorneys for the defendant "Italia"-Societa per Azione Di Navigazione-Genova, sued herein as The Italian Line, and am familiar with the facts, pleadings and proceedings heretofore had in this action.

On November 13, 1974, at noon, your deponent was presented with plaintiffs' attorney's affidavits, exhibits and other papers in opposition to defendant's motion for summary judgment. It is defendant's contention that none of the points concerning which there is genuine controversy are material to this action. The only exception is plaintiffs' attorney's sweeping statement that plaintiffs "controvert" all the statements of fact set forth in defendant's statement under Rule 9 (g). In defendant's statement under Rule 9 (g). In defendant's statement under Rule 9 (g), items #1 through and including #14, are taken directly from the depositions of plaintiffs taken under oath on May 19, 1971, and signed by them at a later date. The original is on file with this Court. Thus, not only did plaintiffs testify under oath, but they there-

Public. For the plaintiffs' attorney now to state that statements of fact based upon plaintiffs' testimony are controverted, can only be interpreted as error, an attempt to mislead this Court, or a statement that plaintiffs have perjured themselves. Moreover, plaintiffs do not specifically controvert their depositions or defendant's statements under Rule 9(g) in their affidavits in opposition to this motion except in some immaterial details.

Despite the numerous "genuine" issues which are claimed to be "material" to this motion, plaintiffs' attorney does essentially refine the questions presented to just two: (1) whether there is a factual issue to be tried concerning the claimed negligence of the defendant in failing to warn plaintiffs of "known dangers ashore" (unlicensed taxis), and whether that failure was a proximate cause of their injuries; (2) whether the vessel's Dr. Nobis was negligent in refusing to accept plaintiffs on board in their condition.

In this reply affidavit, there has been insufficient opportunity to deal with each "issue" which plaintiffs' attorney claims is genuine. It is suggested it would assist the Court if defendant is allowed to offer a point by point refutation as to the genuineness and/or materiality of plaintiffs' "issues". The two broad questions pre-

sented: (1) negligence in failing to warn plaintiffs of unlicensed taxis ashore and (2) Dr. Nobis' refusal to repatriate plaintiffs on the vessel are the questions upon which this motion depends. The mere statement that a fact is controverted is insufficient to successfully oppose a motion for summary judgment, particularly when plaintiffs' depositions and defendant's affidavits are contrary. Plaintiffs have not successfully refuted or controverted any material fact. Material facts remaining uncontroverted appear in plaintiffs' depositions (Defendant's Statement under Rule 9 (g), numbers 1 through and including 14). These deal with the claim of a negligent failure to warn plaintiffs of taxis on shore. The other question which has not been successfully refuted is based upon the affidavits defendant offered as Exhibits and are to be found in defendant's statement under Rule 9 (g), numbers 15 through and including #18.

Judgment, a statement of fact by the moving party which is not refuted or controverted by evidence that would be considered competent at a trial is deemed to be admitted, and plaintiffs must oppose by the same type of materials as are open to movant, Moore's Fed. Practice ¶56.15 (3). A concise resume of the facts which have not been successfully refuted by plaintiffs and which therefore must be

considered admitted are as follows. The Metzgers refused an Italian Libe tour preferring to make their own arrangements which was accomplished with a taxi driver on the street near Fletcher's Wharf and there was no Italian Line agent present. (depositions of plaintiffs pp. 98 & 99). Plaintiffs hired an automobile and driver which was not licensed as a taxi by the Jamaican government and they were involved subsequently in an accident in that vehicle. The Jamaican law regarding drivers' licenses is found attached to the affidavit of Mr. Paul Levy. Plaintiffs' attorney has not objected to or controverted the law as set forth therein. The affidavit and attachments quite simply demonstrate that a Jamaican driver of a private vehicle must demonstrate the same degree of competency as the driver of a commercial vehicle. There is nothing in the affidavit concerning licensed and unlicensed vehicle because it is immaterial. It should be apparent from the affidavit that a licensed taxi must be driven by a commercially licensed driver, whereas a private license is sufficient for the driver of a non-commercial vehicle. There is no distinction between the two categories in respect of safety or competency tests given the drivers. Therefore, there could be no questions of the safety of plaintiffs whether they took a licensed or unlicensed vehicle. There is no material

question of fact as to whether or not defendant warned plaintiffs to take a commercial or private vehicle. Indeed under the cases cited in defendant's memorandum, the law does not impose a duty on the shipowner to assist in the choice or decision of passengers' activities on shore. There is no doubt that plaintiffs refused defendant's preferred tours for whatever reason. There can be no negligence without breach of a duty owed.

With respect of the second question presented as to Dr. Nobis' negligence, much is made in the affidavit of plaintiffs and their attorney of who said what to whom or whether anything was said involving the doctors. In this context, plaintiffs have not refuted or controverted the facts which are material to this motion.

The following is a brief resume of those facts which have not been controverted by the plaintiffs, as found in the affidavits of Drs. Berry, Hastings, Nobis and Balensweig. Mr. Metzger requested Dr. Berry to write his diagnosis on the reverse side of his card so he could accurately inform Dr. Nobis of the problem. Dr. Nobis was shown this card which is plaintiff's Exhibit 1. Concerning the son, the card reads: "? # spleen with (lilegible) peritoneum/ not shocked at present." Dr. Nobis read the card handed to him and was thus acquainted with a possible abdominal problem. The vessel was not equipped for abdominal surgery (not controverted) and Dr. Nobis was not

a qualified surgeon, all statements by the plaintiffs to the contrary notwithstanding. The fact that Dr. Nobis' name appeared as "chief surgeon" on the staff list is a title and had nothing to do with specific medical specialties. In any event, Dr. Nobis' statement is the best evidence of whether or not he is a qualified surgeon. Would plaintiffs or anyone submit willingly to an operation by an admittedly unqualified surgeon?

The Metzger's son, Ralph Metzger III, testified on deposition (see pages 82 and 83) that he was bruised "all over", that he was not able to walk, that he could not "turn on my side at night it hurt so much", and that this was true of "both sides". Indeed, an element of damages claimed by plaintiffs is that the son, Ralph Metzger, III, later developed urinary problems which are claimed related to the accident. Thus, there can be no questions that the boy's abdominal bruises and pain were communicated to Dr. Berry who in turn communicated them at least in writing to Dr. Nobis. Based upon that uncontroverted fact, it is simply a matter of medical opinion and advice that resulted in plaintiffs being refused repatriation on the vessel.

Even if it could be successfully maintained that under the above uncontroverted circumstances, Dr. Nobis was negligent is not accepting plaintiffs on board, as a

passenger for the negligence of its physician. It has been held in this Circuit that the shipowner is not in the business of curing or treating patients (passengers) and it not a floation hospital; that the ship's physician is an independent medical expert carried on board for the convenience of passengers. The only duty of the shipowner is to select a competent physician and the fact that he may err does not prove he was incompetent, or that the company was negligent in hiring him, Joseph Andur vs. Zim Israel Navigation Co., (SDNY) 1969 AMC 2418, 310 F. Supp. 1033, 1042; Ludena vs. Santa Luisa, etc., (SDNY) 1953 AMC 533, 112 F. Supp. 401; DeZon vs. American President Lines, (1943) AMC 483, 318 U.S. citing Laubheim & DeK. N.S. Co. 107 N.Y.S. 228 and O'Brien vs. Cunard SS.Co., 154 Mass. 272.

In this case, however, plaintiffs were examined and treated on shore by a doctor of their own choosing, which choice was forced on them by circumstances they created. Dr. Nobis' acceptance of their treating physician's findings and advice cannot be negligent as a matter of law.

There can be no negligence where there is no duty owed. It remains uncontroverted that defendant owed no duty to inform plaintiffs there were "Gypsy" taxis available for hirein Jamaica, in any event, and particularly

when all drivers had to pass the same driver tests. Plaintiffs' attorney questions the assumption the driver was licensed. Assuming he was not licensed, plaintiffs cannot prove a duty on defendant to warn against such ridiculous possibilities.

Under the best (and most conservative) medical advice available, plaintiffs were refused passage for medical reasons and opinion because of possible internal complications. It cannot be contended that this was negligence, or even medical error just because compliations failed to develop.

Plaintiffs have utterly failed to demonstrate there is a genuine issue of fact which is material to claimed negligence of the defendant either in the area of failing to warn of taxis on shore or refusing to accept plaintiffs on board on the sailing date.

s/ Frank W. Stuhlman

Sworn to before me this 15th day of November, 1974

Salvatore P. Milazzo
Notary Public

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

..

Same Title

. X

STATE OF NEW YORK)
COUNTY OF NEW YORK)
SS.:

FRANK W. STUHLMAN, being duly sworn, deposes and says:

I am an attorney at law, a member of the firm of Kirlin, Campbell & Keating, attorneys for the defendant "Italia"-Societa per Azioni Di Navigazione-Genova, sued herein as The Italian Line, and am familiar with the facts, pleadings and proceedings heretofore had in this action.

The purpose of this supplemental affidavit is to reply to the numerous claims by plaintiffs and their attorney that there are genuine questions of fact which are material to the issues. It is quite clear from reading plaintiffs' papers that every possible point of contention is raised in a desperate attempt to find some item of disagreement the Court might feel requires a trial.

In plaintiffs' statement under Rule 9 (g), there is a specious attempt to avoid all admissions made on examinations before trial by "controverting" all of defendant's Rule 9 (g) statement. However, there is no support in affidavit form or otherwise. The Second Circuit stated

in Community of Roquefort v. William Faehndrich, Inc.

(1962) 303 Fed. 2d, 404; "... the Rule 9 (g) statement
is not a substitute for affidavits alleging facts ...".

Plaintiffs' naked allegations that all of defendant's Rule
9 (g) statement is controverted is without supporting affidavits and therefore such must be deemed admitted, particularly those items based upon plaintiffs' sworn testimony.

The essence of plaintiffs' purported claim appears to lie in two areas (1) a negligent failure of defendant to warn the plaintiffs that some of the taxis in Jamaica were licensed as such and some were merely private vehicles (Gypsy taxis); (2) Dr. Nobis, the ship's physician, was negligent in refusing to allow plaintiffs back on board the vessel because of their injuries.

Anent the first area of claimed negligence, it has been demonstrated in defendant's Memorandum that the shipowner as a matter of law cannot be held liable for the negligent injury on shore of passengers by an independent contractor, (see cases cited therein). In order to resolve any lingering doubt that plaintiffs might have a triable issue in this area, we refer to the Jamaican law applicable to taxicabs. Plaintiffs have not controverted the applicable Jamaican regulations attached to the affidavit of Mr. Paul Edmond Levy, a Jamaican attorney. It is clear from a review of his affidavit and the attached regulations

that the differences between testing for a "private" driver's license and a "general" driver's license, are not matters of safety, competency or driving ability. It is equally clear that the licensed driver of a private vehicle who offers it for hire must pass as rigid a safety or competency driving test as does the driver who is 11censed to operate a commercial vehicle for hire. (licensed taxi). All vehicle operators in Jamaica who are licensed as drivers are equally qualified by law. Therefore, as between licensed and unlicensed taxis, (both of which require licensed drivers) there simply exists no danger against which a shipowner could warn the plaintiffs. Plaintiffs' attorney has raised the specter (without proof) that perhaps Godwin Johnson was not even a licensed driver. It would be absurd to expect the shipowner to warn plaintiffs they might find an unlicensed driver willing to serve them on the Island and there is no support for this. (In point of fact, Godwin Johnson held a valid driver's license for a private vehicle but was not licensed to drive a commercial taxi, and this can be supported by affidavits if required.) It is submitted however, that if there is no duty on the part of the shipowner to warn against private vehicles with licensed drivers (Gypsy taxis), there cannot conceivably be a duty to warn against the possibility of a vehicle driven by an unlicensed driver.

Supplemental Reply Affidavit

Plaintiffs' second area of contention that Dr.

Nobis was negligent as a ship's physician because he refused plaintiffs further passage is replete with argumentative detail which falls far short of genuine issues which are material to the case. Defendant's reply affidavit (see cases cited p. 6) is referred to for the legal proposition that a shipowner cannot be held liable to a passenger for the negligence of its physician.

Plaintiffs' choice of a treating physician (Dr. Berry) was forced upon them by circumstances. There was no way for plaintiffs or the shipowner to know their driver would be negligent. Once the injuries were received, plaintiffs accepted the ministrations of Dr. Berry. Dr. Nobis did not treat plaintiffs at any time and Dr. Nobis cannot be said to have been negligent or incompetent. Plaintiffs offer not a scintilla of evidence that they were refused what would have been better treatment or facilities on board the vessel than were available on shore. Nor have they offered evidence that such refusal inured to their detriment. We have found no cases and plaintiff has cited none where a shipowner has been held liable for leaving passengers on shore for treatment in a civilized country with government and private hospital facilities available. The Court is asked to take judicial notice that Jamaica is a highly civilized though small nation where

English is the official written and spoken language.

Plaintiffs have not controverted in any way the statement that the vessel was not equipped for abdominal surgery. Plaintiffs have not confoverted that St. James Hospital was equipped for abdominal surgery or that qualified surgeons were available there.

The fact that the Metzger boy was ambulatory is immaterial, if true, in the face of his own testimony that he could not walk and could not lie on either side (at least on the date the ship sailed) due to abdominal pain. The fact that he may have recovered following the vessel's sailing is quite beside the point. The fact that Dr. Berry wrote on his card the boy was then not "shocked" is equally immaterial because the boy had abdominal pain by his own admission. Following an accident, abdominal pain is a symptom of possible internal injury which could result in shock and death without surgical intervention. This medical fact has not been controverted by plaintiffs. Dr. Balensweig's affidavit was offered to demonstrate accepted medical practice under the circumstances. The doctor incidentally mentioned the weight of a cast as a factor in moving Mrs. Metzger and indeed, a cast was eventually applied. Incidentally, the movement of Mrs. Metzger to the vessel undoubtedly could have been accomplished, but it involves more than a gangway. It includes transferring a

loaded stretcher from the dock to a tender (light boat), a trip to the vessel and a second transfer from the tender to the ship. A tender in harbor is normally expected to be affected by waves.

Much is made in plaintiffs' affidavits that Dr.

Nobis was listed as "chief surgeon" by the defendant. This is merely a title. Dr. Nobis was not held out to the plaintiffs at any time as a surgeon and indeed, he specifically said he was not one. In any event, plaintiffs did not rely upon Dr. Nobis purported qualifications as a surgeon at any time to their detriment. The lack of equipment on board for abdominal surgery (not controverted) was sufficient ground for refusal of passage.

A suggestion is made by plaintiffs that even if Dr. Nobis was not in fact a qualified surgeon, they should have been taken on board because the vessel "may" have carried a qualified surgeon among its passengers. This raises not issue of triable fact. The checking out of passenger-surgeons' qualifications can hardly be held a duty of requirement on the part of the vessel and in any event, any such qualified passenger could have refused to operate at sea. The possibility of an emergency operation on board was a situation which Dr. Nobis specifically avoided. It is important to note that the vessel's hospital plan offered by plaintiffs demonstrates there is no operating room

or surgical facilities on board.

Two additional factors have been raised by plaintiffs in their attempt to create genuine fact issues. One is the claim that neither Mr. or Mrs. Metzger apparently heard Dr. Berry and Dr. Nobis conversing, at least not specifically concerning them. This is inadequate to overcome the affidavits of Dr. Berry and Dr. Nobis as to what facts were presented to them and their medical opinion and decision flowing therefrom. Whether or not any specific communication between the two doctors was heard by plaintiffs is wholly immaterial. This cannot controvert either doctors' affidavit. As if more were needed, plaintiffs' Exhibit I is a photostat of Dr. Berry's diagnosis written on the reverse of his own card for the sole purpose of communicating to Dr. Nobis. This is testified to by Mr. Metzger, (deposition of plaintiffs pp 45-48). It is also admitted by plaintiffs, that although Dr. Berry may have initially felt they could go back to the ship, he specifically told Mr. Metzger "...to be sure there was a surgeon on the ship... " (deposition of plaintiffs p.41) and, "... grab a cab and go back to the dock and find out if there is a surgeon... " (deposition of plaintiffs p. 42). Thus, there is ample confirmation in the admissions on deposition of the plaintiffs of both Dr. Berry's and Dr. Nobis' affidavits regarding the possiblity of an internal injury

and for Dr. Berry's position that their return to the vesset was on condition there be a surgeon on board. Dr. Nobis has sworn he was not a qualified surgeon and this has not been controverted.

It is the firm conviction of your deponent that if any doubt lingers that plaintiffs might somehow harbor a material fact concerning which there is a genuine issue to be tried, it can be destroyed by further affidavits.

All of plaintiffs' voluminous argumentative details should not have to be the subject matter of affidavits, but such can be accomplished and, it is respectfully submitted, should be allowed by the Court rather than deny this motion. Plaintiffs "must adduce factual material which raises a substantial question of the veracity or completeness of the movant's showing or presents countervailing facts"; and the rule "that summary judgment may not be rendered when there is the 'slightest doubt' as to the lacts no longer is good law", Beal vs. Lindsay, (2d Circ. 1972)

Local rule 9)g) reads in part as follows:

"All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party."

It is respectfully submitted the mere statement by plaintiffs that defendants items are controverted is insuffi-

should be deemed admitted. In the cited cases of Community of Moquefort vs. William Faehndrich, Inc. (supra, at page 498, the Second Circuit said: "However, summary judgment cannot be defeated where there is not indication that a genuine issue of fact exists; to permit that would be to render this valuable procedure wholly inoperative and to place a 'devastating gloss' on the rule".

It is urged therefore that the Court grant defendant's motion for summary judgment. It is respectfully submitted it has been amply demonstrated no material facts
exist concerning which there is a genuine issue to be tried.

If the Court should feel there is sufficient doubt as to
the materiality or genuineness of any fact raised by plaintiffs, it is requested further affidavits on such points
be allowed.

FRANK W. STUHLMAN

Sworn to before me this 27th day of November, 1974

Nicholas J. Marcantonio
Notary Public

UNITED STATES DISTRICT COURT

SOUTHER DISTRICT OF NEW YORK

RALPH METZGER, JR., ADELE METZGER and RALPH METZGER III, an infant under 14 by his parent, RALPH METZGER, JR.,

Plaintiffs,

-against-

: 70 CIV 5629

THE ITALIAN LINE,

Defendant.

Deposition of plaintiffs RALPH METZGER,

JR., ADELE METZGER and RALPH METZGER III,
held at the offices of Kirlin, Campbell &
Keating, Esqs. 120 Broadway, New York, New
York, on the 19th day of May, 1971, at
1:20 p.m., pursuant to notice dated February
19, 1971, before Edward Shulman, a Notary Public
of the State of New York.

Esquire reporting company, inc.
walter holden, c. s. r.
150 nassau street
new york, n. y. 10038
beekman 3-6388

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PM	2	APPEARANCES :					
	3						
	4		HERBE	ert J. KAP ney for p 170 Broad	laintif	fs	
	5			New York,		rk	
	6						
	7		KIRL:	IN, CAMPBE	LL & KE	ATING, E	sqs.
	8		Atto	120 Broad New York	lway		
	9						
	10		BX:	FRANK W.	Of C	ounsel	'
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115a

3 1 IT IS HEREBY STIPULATED AND AGREED 2 by and between the attorneys for the repsective 3 parties herein, that filing and sealing be and the same are hereby waived. 5 IT IS HEREBY STIPULATED AND AGREED 6 that all objections, except as to the form 7 of the question, shall be reserved to the 9 time of the trial. IT IS FURTHER STIPULATED AND AGREED 10 that the within deposition may be signed 1: and sworn to before any officer authorized 12 to administer an oath, with the same force 13 and effect as if signed and sworn to before 14 15 the Court. IT IS FURTHER STIPULATED AND AGREED 16 that a copy of the within deposition shall be 17 furnished to the attorney for the plaintiffs, 18 19 without charge. 20

21

22

23

24

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1
                 METZGER JR., a plaintiff herein,
   RALPH
2
          having been duly sworn by the Notary Public,
3
          testified as follows:
    EXAMINATION BY
    MR. STUHLMAN:
                Your full name?
          Q
                Ralph Metzger, Jr.
          A
8
                Your home address?
          Q
                17 Vincent Drive, Clifton, New Jersey.
          A
10
                Have you ever used any other name?
11
          Q
           A
                 No.
12
                 Are you suing The Italian Line for injuries
           Q
13
    allegedly occurring on December 30, 1969?
14
                 That is correct.
           A
15
                 You are married, sir?
           Q
16
                 Yes, I am.
           A
 17
                 Your wife's name, please?
           Q
 18
                 Adele.
 19
           A
                 What is her maiden name?
           Q
 20
                 Lipton.
           A
 21
                 What is your address?
           Q
 22
                  Her address?
           A
 23
                  You living together?
            Q
 24
```

Yes.

1		Metzger
2	A	Yes.
3	Q	You all suffered personal injuries?
4	A	Yes.
5	Q	What was the location of the injuries?
6	A	Location on the body?
7	Q	Where were you hurt, were you all injured
8	in an accid	ent?
9	A	Near Duncans on the road between Duncans
10	and Falmout	h in Jamaica.
11	Q	Were you all injured at the same time?
12	A	Yes.
13	Q	Were you rassengers in a vehicle at the
14	time?	
15	A	Yes.
16	Q	Will you describe that vehicle?
17		It was a six passenger Rambler.
18	Q	Rambler?
19	A	Yes.
20	Q	Had you hired this Rambler?
21	Α	Yes.
22	Q	Where did you get in it or hire it?
23	. A	At the dock, what is called Fletcher's
24	Wharf, when	e the boat docked. Where the tenders let you

- 2 off the boat in Montego Bay.
- 3 Q Was this an Italian Line tour that you were
- 4 on, this taxi trip?
- 5 A No.
- 6 . Q Did they have Italian Line tours?
- 7 A They ran different tours. They did run
- 8 tours.
- 9 Q This was not one of them?
- 10 A No.
- 11 Q What were the circumstances under which
- 12 you got this taxi?
- 13 A I don't follow.
- 14 Q Just take it step by step. You got off
- 15 the ship how, how did you get off the vessel?
- 16 A We took a tender from the vessel into the
- 17 dock.
- 18 Q You got off on the dock?
- 19 A That is correct.
- 20 . Q This is all three of you now. When I
- 21 say all of you, your family, I mean your wife and your
- 22 son Ralph.
- 23 A Yes.
- 24 Q You went from the tender to the dock. This
- 25 dock I believe you said was called Fletcher's Wharf.

1		Metzger 9
2	A	Yes.
3	Q	What did you do when you got off the dock
4	on Fletcher	's Wharf, what did you do, see a taxi or
5	what?	
6	A	We
7	Q	Describe how you got the taxi.
8	A	Well, we didn't take the taxi. I think
9	you need a	little clarification here because
10	Q	That is what I am asking you for.
11	A	We had taken a tender into the dock.
12	Q	Right.
13	A	And we went shopping.
14	Q	Right.
15	A .	Yes.
16	Q	Where?
17	. A	In Montego Bay.
18	- Q	Right. The three of you, you all stayed
19	together?	
20	A	Yes. To answer your question about a
21	tour, the	ship did run
22		MR. KAPLOW: Don't go back.

from the boat onto the land.

23

24

25

You went shopping in Montego Bay?

I am trying to clarify. There were two trips

1		Mwtzger 10
2	Q	What was the trip of your accident?
3	A	The trip
4	Q	Was that the first one or second one?
5	A	The second one.
6	Q	Are you talking about the first trip?
7	A	You have raised the question when we came to
8	the dock.	You are throwing me into a state of confusion.
9	Q	I don't mean to confuse you, sir, please.
10	A	You are not confusing me, you are a little
11	confused.	
12		MR. KAPLOW: Off the record.
13		(Off the record discussion.)
14	Q	You went shopping in Montego Bay?
15	A	Yes.
16	Q	Did you make purchases?
17	A	Yes.
18	Q	What did you do then?
19	A	We went back to the ship.
20	Q	By tender?
21	. A	By tender.
22	Q	What did you do on the ship?
23	A	We deposited the packages in the room.
24	Q	Yes?
25	A	Picked up our box lunches which had been
		123a

A Yes, we had asked ahead. That was one

of the things because we had intended to go elsewhere.

7 MR. KAPLOW: Just answer his question.

8 Q You had intended to go where?

9 A I had asked on the dock about taking a trip

10 elsewhere.

is that the idea?

11 Q Who did you ask on the dock?

12 A I asked the Jamaican Tourist Board.

13 Q Did you take the trip you asked about

14 eventually?

15 A I didn't ask about a trip. I asked about

16 taking a trip to Ochos Rios.

17 Q But you went back to your ship with the

18 packages?

19 A When I first came off, right.

20 Q Then you went back to the ship, deposited

the packages which you purchased and picked up box

22 lunches, is that right?

23 A Yes.

24 Q Then did you leave the ship again?

25 A Right. 124a

	1			Metzger	12
	2		Q	Did you take your box lunches with y	ou?
	3		À	Right.	
	4		Q	How did you get back to the shore?	
	5		A	By tender.	
	6		Q	About what time did you get back to	the
		hore	the s	econd time?	
Ring	8		A	Approximately nine. Low	
			Q	When?	
dig	10		A	Approximately nine Loon	
	11		Q	When you got to Fletcher's Wharf, is	s that
	12	corre	ct, th	e second time, did you get there the	second
	13	time	on the	same dock?	
	14		A	Yes.	
	15		0	You get off the tender or out of th	e tender
	16	onto	the do	ock?	
	17		A	Yes.	
	18		0	What did you then do, sir?	
	19		A	I went back to where the tourist, 3	Tamaican
	20	Tour	ist Bo	ard official was.	
	21		Q	Right.	
	22			And I was approached by a cab driv	
	23	clos	e to h	im and I made my own arrangements to	go to
	24	Ocho	s Rios		
	25		Q	With whom?	

- 2 that correct?
- 3 A This car was directly in front of this
- 4 tourist official.
- g Who was the tourist official, was he a
- 6 Jamaican?
- 7 A A Jamaican Tourist Board -- with a hard hat
- 8 helmut, short pants, a regular uniform.
- 9 G Will you describe the car, can you remember
- 10 the color or markings, if any?
- 11 A It was a six passenger Rambler?
- 12 Q Do you remember the color?
- 13 A I thought it was a dark red.
- 14 Q Dark red?
- 15 A Yes.
- 16 Q Do you know whether it had any license
- 17 plates?
- 18 A Yes, it had a plate.
- 19 Q Did it have any meter in the taxi?
- 20 A No.
- 21 MR. KAPLOW: Note my objection to the form
- of the question.
- 23 Q Did the driver wear a uniform?
- 24 A No.
- MR. KAPLOW: Objection to the form of that 128a

1	Metzger 18
2	distinguish them from private vehicles?
3	MR. KAPLOW: I object to the form of
4	the question.
5	You are asking does he know now or did
6	he know then?
7	Q Do you recall
8	MR. KAPLOW: I direct the witness not
9	to answer.
10	MR. STUHLMAN: Does he know now.
11	Q Do you know now, do you recall any distinguishing
12	features or markings on any of the cars in the vicinity
13	of the Tourist Board's official booth which would lead
14	you to believe they were other than private vehicles?
15	MR. KAPLOW: I am going to object to the
16	form of the question unless it's established
17	that he had such knowledge at that time as
18	distinguished from his knowledge now.
19	Q Do you recall, is my question.
20	MR. KAPLOW: I still object to the form
21	of the question.
22	May we go off the record?
23	MR. STUHLMAN: Yes.
24	Off the record.
25	(Off the record discussion.)

- 2 Do you recall having seen any vehicle in
- 3 the vicinity of the Jamaican Tourist booth at the time
- 4 you were making arrangements with Mr. Johnson on vehicles
- 5 which distinguished them or were different from the
- 6 average passenger vehicle?
- 7 A No.
- 8 Q Did you find out subsequently that there
- 9 were or are on vehicles for hire in that part distinguishing
- 10 features or markings, that is distinguishing them from
- 11 private vehicles, do you know now, do you now have
- 12 knowledge?
- 13 A Are you talking about markings on the car?
- 14 O On the car.
- 15 A Are you referring to a license plate?
- 16 Q I am talking of the car.
- 17 A The car itself?
- 18 Q That's right.
- 19 A No.
- 20 Q Do you now know there is any distinction
- 21 between the license plates?
- 22 A Yes.
- 23 Q Between cars for hire and private cars?
- 24 A Yes.
- 25 0 You do?

1		Me	etzger	20	
2	A	Yes.			
3	Q	What is that	distinguish	ing feature?	
4	A	Now I know t	hat they have	a a plate that	
5	indicates i	t's a license	d cab.		
6	Q	To your pres	ent knowledg	e, is that the only	
7	distinguish	ing feature b	etween a pri	vately owned vehicle	
8 8	and a vehicl	e which is of	fered to the	public for hire	
9	and license	d as such?			
10	A	Yes.			
11	Q	That is the	only disting	uishing feature	
12	that you ca	n recall?			
13	A	Right.			
14		MR. KAPLOW:	Objected t	io.	
15		You mean th	at he is tall	king about his knowled	lge
16	now.				
17		When this c	ame into exi	stence he doesn't	
18	know	•			
19	Q	Do you reca	all any other	distinguishing	
20	feature ex	cept this whi	ch you have	recently come	
21	across abo	ut the licens	se plate?		
22	A	That is the	way I answe	red it.	
23		MR. KAPLOW	: He has no	t even said that	
24	he)			were on there at	
25		time.	133a		

MR. STUHLMAN:

where the car was taken?

23

24

25

Now, yes.

You are specifically stating as far as

1	Metzger 22
2	MR. KAPLOW: He is only asking you
3	about now.
4	Q As of now, is this the only distinguishing
5	feature that you know of between private and publicly
6	offered vehicles?
7	A Yes.
8	Q Are you saying that you did not know
9	at the time that this was the distinguishing feature?
10	MR. KAPLOW: I object to the form of
11	the question.
12	Now you are interpreting it at that time
13	PPV license was used as a distinguishing mark.
14	He never testified that that was. All he
15	says is that now he knows it's a distinguishing
16	mark.
17	MR. STUHLMAN: Stop that, will you?
18	Read the question.
19	(Record read.)
20	Q Did you know at the time that you were on
21	Fletcher's Wharf that there was a distinguishing
22	feature such as a PPV plate between public taxis and
23	private vehicles, did you know?
24	A No.
25	Q Did you and your family get into the vehicle

	1		Metzger	24
	2	Q	As the British do?	
	3	A	Yes.	
	4	Q	Was this a straight road?	
	5	A	The road to Ochos Rios, no, it w	as a hilly
	6	road.		
	7	Q	At the time of the accident can	you describe
	8	just brie	fly so we know how it happened, you	r description
	9	of how it	happened?	
	10	A	He was driving along.	
	11	Q	You are talking about your drive	r?
	12	А	Yes, the car I was in was driving	g along
	13	on the le	efthand side of the road and it got	to he
	14 }	nad gone, a	approximately 28, 29 miles from Mont	ego Bay when
	15	up ahead	there were two small cars on the sa	ame side of
17.17	16	the road	as he was one.	
	17	. Q	In line?	
E(o)	18	A	The had either the first you	couldn't
	19	tell whe	ther they had stopped or they were	going very
	20	slowly.		
	21	. Ω	But they were behind each other	in line?
	22	A	Ye	
	23	Q	Then what happened, what did you	u see?
	24	A	He pulled out because he was con	ming along
	25	and he p	ulled out quite a distance behind h	im, he
			1374	

I would say they were both going at a fast

138a

- 2 rate.
- 3 Q Did the cars, the truck and the car in which
- 4 you were riding actually meet head on?
- 5 A Yes.
- 6 Q Bumper to bumper?
- 7 A Yes.
- 8 Q Where were you and your wife and the child
- 9 riding at the time?
- 10 A My child was sitting in the front seat
- 11 to the right of the driver. I was sitting in the rear
- 12 seat directly behind.
- 13 Q Did this car have a lefthand drive?
- 14 A No, it's an American car.
- 15 Q Which has a lefthand drive.
- 16 A Lefthand, I am sorry.
- 17 Q Your son was sitting on his right?
- 18 A Yes.
- 19 Q. The same steering rig that appears in
- 20 American cars?
- 21 A Yes.
- Q But they still drive on the lefthand side?
- 23 A Yes.
- 24 Q Your wife and you were in the rear seat?
- 25 A That's right. After the --

- 2 A Right temple. I was cut there.
- 3 O Yes?
- 4 A My left knee was severly banged and
- 5 that required stitching.
- 6 O Yes?
- 7 A I had bad bruises all over my legs.
- 8 Q Yes?
- 9 A I still have a lump on my right leg.
- 10 Q I will get to that in a minute.
- 11 A I have a lump here.
- 12 Q I will get to that in a minute.
- 13 A All right.
- 14 Q What other injuries did you get at the
- 15 time?
- 16 A You are referring to me?
- 17 Q Yes.
- MR. KAPLOW: What else did you hurt, that
- is what he is asking you.
- 20 A The stitches were at the forehead and the
- 21 knee. I was severely shaken, put it that way.
- MR. KAPLOW: Were you bleeding?
- 23 A Yes, bleeding all over. My shirt was
- 24 ruined. My pants, my socks and my sneakers and the
- 25 blood was just flowing.

- In fact, I lifted my hand to my forehead 2 and it was just a sea of blood. 3 As far as your injuries are concerned, what are your present complaints; if any. 5 Well, I still have my knee -- my left knee 6 still stiffens on me. That was all swollen and the 7 swelling has receded but it still has black and -- red 9 marks on it. Are you claiming a cosmetic defect, that the 10 scars are ugly or anything like that? 11 12 MR. KAPLOW: Sure. Whatever you are complaining of, show it 13 14 to him. My knee, the stiffness is still in there. 15 A Are you claiming any scars? 16 0 MR. KAPLOW: Any scar marks. 17 On your knee? 18 Q I have a lump here. 19 A 20 You are indicating your right thigh? 0 21 It's like a grapefruit. A
 - 24 upper thigh.

Q

22

23

There was stitching in here. 25

Do you have a scar on your left knee?

MR. STUHLMAN: Indiates lump on left

1		Metzger 30	
2	Q	Some slight discoloration inside of your	
3	left knee		
4	A	res. I had stitching here. Which could	
5	have requir	ed plastic work.	
6	Q	I notice a slight mark on the left side.	
7	A	Yas.	
8	Q	Where were you treated?	
9	A	I was treated at the Falmouth, I don't know	
10	whether it'	s a dispensary or a hospital.	
11	Q /	You don't know the name of it?	
12	A	I would guess it's the Falmouth Hospital.	
13	Q	Is that ir. Falmouth, Jamaica?	
14	A	Yes. What I meant, it is not my idea of	
15	a regular h	ospital.	
16		MR. KAPLOW: Off the record.	
17		(Off the record discussion.)	
18	A	Then I was subsequently treated at the	
19	St. James H	ospital.	
20	Q	How long were you in Falmouth Hospital?	
21	A	Just taken there at the time of the accident.	
22	Q	Emergency treatment?	
23	A	Right.	
24	Q	How long were you there?	
25	A	An hour or so.	

1		. Metzger 31
2	Q	Then you were taken where?
3		I presume your family went with you to
4	Falmouth.	
5	A	Don't presume anything.
6	Q	Just say no.
7	A	They went with us, with me to Falmouth but
3	there is mo	re to it than meets the eye. Then I was
9	treated and	stitched at St. James Hospital, Monteco
10	Bay.	
11	Q	You were taken there by what means?
12	A	St. James Hospital, Montego Bay.
13	Q	What time did you arrive there?
14	A	At that hospital?
15	Q	That's right.
16	A	I would guess about six o'clock.
17	. Q	Were you an inpatient at St. James?
18	A	Yes.
19	Q	For how long?
20	A	This happened on Tuesday. I was there until
21	the followi	ing Monday.
22	Q	Tuesday was the 30th?
23	A	Right.
24	Q	Were you discharged as fit for duty or fit
25	for travel	or just what was the status?
		144a

You left --

Back in New York. But we left on the 5th.

24

25

A

1			Metzger 33
2		A	St. James on the 5th.
3		Q	Did you and your family travel back on the
4	5th?		
5		A	Yes.
6		Q	Did you fly back?
7		A	My wife was a stretcher case.
8		Q .	Did you fly back?
9		A	We flew back.
10		Q	What airline?
11		A	Air Jamaica.
12		Q	On January 5th?
13		A	Yes, arriving on the 6th.
14		Q	Did you go to a hospital when you arrived?
15		A	No.
16		Q	'In New York.
17		A	No.
18		Q	What was your next treatment, if any?
19		A	I was treated by Dr. DeBell.
20		Q	What date? What is his address?
21		A	He is in Passaic, New Jersey. His address
22	is 24	5 Lexi	ngton Avenue, Passaic, New Jersey.
23		Q	Is he a private practicing physician?
24		A	Yes.
25		Q	When did you first go to him?
			146a

1		Metzger	34
2	A	He is a surgeon.	
3		Immediately upon return.	
4	Q	Is that the 6th?	
5	A	In other words you are asking a	
6	specific da	te?	
7		MR. KAPLOW: Leave a space and we	will
8	fill	it in.	
9		MR. STUHLMAN: Yes.	
10	A	January 6, 1976	
11	Q	Did you go to him the day you arriv	red?
12	A	I would think so, yes. We got in	at two
13	in the morn	ning and I would say at that night I	got to
14	him.		
15	Q	What did he do for you or to you?	
16	A	Well, he treated me after that.	
17	. Q	What did he treat?	
18	A	He treated all the bruises. He re	moved
19	all the st	itches from both the knee	
20	δ	You are indicating he removed stit	ches from
21	your left	knee?	
22	A	Yes.	
23	Q .	And from your right temple?	
24	A	Yes.	
25	Q	What other treatments?	
		147a	

35 Metzger 1 He treated this area over here. 2 A Indicating the upper right thigh? Q 3 Yes. Lateral thigh? Q A Yes. What did he do for that thigh? Q You are asking me medical terms? A Q Don't you remember, was it heat treatment 9 or a cast or what? 10 A No, he tried to -- I had various bruises 11. and sores all over. And he was treating these various 12 13 items. Q As far as you know, did you have any broken

16 A No.

bones?

17 Q That is from this accident?

18 A No.

19 Q How many times were you treated by Dr.

20 DeBell?

21 A I would say no more than 10 times.

22 Q For what period of time, from January 6th

23 until when?

24 A Somewhere, I would say he treated me up to

25 about May or June. 148a

36 1 Metzger 2 Of the same year? Q 3 A Yes. Did you get any other treatment at any 4 hospital, clinic or medical facility or any other 5 doctor except Dr. DeBell after you came back on January 7 6th? 8 A No. STUHLMAN: Can we get his treatment 9 MR. 10 records? 11 MR. KAPLOW: Yes, I will get them. I 12 don't have them. Have you ever previously injuried your left 13 leg prior to your voyage on the ship? 14 15 No. A Have you injured it since? 16 17 A No. What about the same question with your 18 0 19 right thigh? 20 A No. Have you ever had any lawsuits or claims for 21 Q 22 personal injury before this one? 23 A No. 24 What is your occupation, sir? CPA and Internal Revenue agent. 25 149a

5.

Metzge

1		Metzger	37
2 .	Q	Do you work for the Government?	
3	A	Yes, I do.	
4	Q	Where is your office?	
5	A	120 Church Street.	
6	Q	Have you been with the Covernmen	t, for how
7	long?		
8	A	Twenty-four years.	
9	Q	As far as your wife's injury is	concerned,
10	I want to i	nquire of her but I should like t	co ask
11	you whether	you have any knowledge concerning	ng her injuries
12	or condition	on that she might not be aware of	that you
13	feel you as	re more familiar with than she is	
14	Α .	No. She is familiar with them.	
15	Q	She can tell me completely about	t her injuries?
16	A	Yes.	
17	Q	You said something earlier abou	t something
18	happening !	between the accident and getting	to Falmouth
19	or St. Jam	es Hospital.	
20	A	Yes.	
21	Q	What was that, is that part of	your claim?
22	A	It's part of the whole picture.	
23	Q	Would you tell me about that my	sterious
24	element?		
25	λ	Nothing mysterious.	

	1		Metzger	38
x	2	Q	It 's unknown to me.	
	3		Will you please tell me what you are	
	4	talking abou	it?	
	5	A	The accident happened.	
	6		MR. KAPLOW: Approximately when?	
	7	A	About 1:15 in the afternoon.	
	8	Q	Right.	
	9	A	At the time of the accident, as I	don't
	10	want to get	into it. My son was severely cut.	He
	11	was bleeding	g very severely at the time of the ac	cident.
	12		My wife one of the reasons I made	the
	13	note of the	fact that there were two impacts her	e, my
	14	wife felt t	hat on that second impact is when her	leg
	15	broke becau	se she could hear the snap. But I wi	111
	16	let her tel	1 you that.	
	17		After the accident and of course, the	ne car
	18	we were in,	the whole front end was pushed in la	ike an
	19	accordion.	But since it was like an American w	ith a
	20	lefthand dr	rive, my son got the worse of the thin	ng.
	21		He was severely cut, the glass was	smashed
	22	His right f	foot was caught and they had to pry i	t loose
	23	In other wo	ords, we were fortunate he didn't bre	ak his

25 After the accident, all that happened, they all started to argue whose fault it was. 151a

foot.

	1	Metzger 39
	2	MR. KAPLOW: Tell him what took place
	3	as far as you were concerned. You were the one
	4	who was able to move around.
	5	A After the accident they finally got a small
	6	English type car.
	7	Q Who is they, anyone you know?
	8	A The driver of the car that we were in.
	9	MR. KAPLOW: Johnson.
	10	Q Referring to Mr. Johnson?
	11	A Mr. Johnson. Mr. Johnson sat in the back
	12	seat holding my son, who was bleeding profusely, on his
	13	lap. They then put my wife into the front seat of the
	14	car with a broken leg and sort of pushed her over.
	15	The foot, of course, was and they pushed
Sunt.	16	me next to here. Then the driver got in. so we had
	17	three people in the front seat of a small car.
	18	MR. KAPLOW: Where did the car go?
	19	A Then from there, the car went back towards
	20	Palmouth which was towards Montego Bay.
	21	Q Who was driving, do you know?
	22	A No, I don't know.
	23	Q Was it one of the drivers involved in
	24	the other cars involved in the accident?
	25	A No, it was somebody not involved. 152a

22 THE WITNESS: Then I spoke to -- we waited 23 there for something like 45 minutes until the 24 doctor -- there was no doctor at the hospital. We 25 waited 45 minutes and the dictor finally came.

Q Yes?

24 A He sent me into the telephone room to 25 call the ship to verify that there was a surgeon on

Metzge

1	Metzger	42
2	the ship.	
3	Q He sent you to call?	
4	A To the phone room that they have a	t the
5	hospital.	
6	Q Did you call the ship?	
7	A No, I couldn't get through. The p	hone
8	service being what it is in Jamaica, I could n	ot get
9	through. So finally he came into the phone r	oom and
10	he tried to get through and was unable to.	
11	He then told me, "Grab a cab and go	o back
12	to the dock and find out if there is a surgeon	. Once
13	you know there is a surgeon, call me and I wil	l put
14	them both in an ambulance and sent them back t	o the
15	sh'p."	
16	He was referring to my son and my	wife.
17	Q Did you do that?	
18	A Yes.	
19	Q Go ahead.	
20	A I took a cab. But before I left he	e was
21	trying to get the police to get through. When	he couldn't
22	get through on the regular phone service he was	s trying
23	to get through on the police wireless.	
24	I left and went back to the dock as	nd at

25 the dock there were members of the crew there. I asked, 155a

1		
2	"Is there a	doctor, a surgeon on the boat?"
3		And they said, "Yes."
4	Q	Go ahead.
5	A	I was about to go to make a call when one
6	of the crew	members came up and said the doctor is just
7	coming ashor	re. So I waited until the doctor came
8	ashore becau	use he was just coming in in a tender.
9		The doctor told me to go back to the
10	ship and pag	ck my bags.
11	Q	What was the doctor's name?
12	A	I know they referred to him as doctor. I
13	could get ye	ou that.
14	Q	Can you describe him? Do you have his
15	name writte	n down somewhere?
16	A	No, he was everybody called him doc on
17	the boat, he	was the doctor.
18	Q	Can you describe him, do you remember what
19	he looked 1	ike?
20	A	Blondish fellow.
7.1	Q	About what height?
22	A	Approximately mine.
23	Q	About what weight, your build or slight?
24	A	I would say slighter than I am.
25	Q	Age? 156a

Metzger

```
1
   off the vessel and --
               He didn't say get off. He wanted me to go
3
   back and pack my bags.
               You said you were not going back to the
5
   ship?
               Right.
         A
7
        He said he was going back to the hospital and
   you accompanied him back to the hospital?
                Yes.
          A
10
                At this time, at St. James or Falmouth?
11
                That was at Falmouth.
12
                Did you then go to the hospital at Falmouth
13
   with the doctor?
14
                Yes.
          A
15
                Then what happened?
          Q
16
                A nurse came along as well.
          A
17
                From the ship?
          Q
18
                Yes, who spoke no English.
          A
19
               The doctor spoke English, I assume?
          Q
20
                Yes.
          A
21
                Yes?
22
                Before I left the Falmouth Hospital to go
23
    back to the dock, I had Dr. Berry write on a card just
24
    what the condition of my son and my wife was.
```

- 2 to make that clear to you.
- 3 Q When did you do that?
- 4 A When I was up at the Falmouth Hospital
- 5 before I went back to the dock.
- 6 Q Did the doctor examine your wife and your
- 7 son?
- 8 A No.
- Q The ship's doctor?
- 10 A No.
- 11 Q What did he do at the hospital?
- 12 A When he got to the hospital -- on the way
- 13 up to the hospital I showed him this card and I told
- 14 him we wanted to gack on the ship.
- 15 You showed him what card?
- 16 A The cardthat I had from Dr. Berry showing
- 17 what their condition was, specifically.
- 18 MR. KAPLOW: Off the record.
- 19 (Off the record discussion.)
- MR. STUHLMAN: I read from the card
- 21 offered to me --
- MR. KAPLOW: The back of the card is what
- 23 counts. You can unstaple it. That is my own
- 24 file.
- 25 Q You show me a card with some writing on the 159a

- 2 back. It's a card of Dr. Ronald K. Berry, Falmouth,
- 3 Jamaica, West Indies.
- What is written on the back, what are you
- 5 claiming, this is his, Dr. Berry's diagnosis?
- 6 A Yes, sir.
- 7 Q of the injuries of your wife and son?
- 8 A Yes.
- 9 Q What about this card? This was given to
- 10 you?
- 11 A I asked Dr. Berry to put it down so when I
- 12 went back to the ship I could show the doctor what
- 13 the situation was.
- 14 Q Did you do that?
- 15 A Yes.
- 16 Q When did you show --
- 17 A I showed it to him at the dock and in the car
- 18 on the way up to the hospital.
- Pin 19 Q This carryou got from Dr. Berry before you
 - 20 went back to the dock?
 - 21 A Yes.
 - 22 Q You showed this to The Italian Line ship's
 - 23 doctor?
 - 24 A Yes, I knew when I got back the technical
 - 25 language he would use I wouldn't remember.

- 2 Q So far as we can determine this speaks of a
- 3 fractured right femur and needing some fastening or
- 4 rather fixation.
- The question mark about the son, something
- 6 about spleen and I can't read the rest of it. I won't
- 7 attempt to.
- 8 There is indication of note of diagnosis
- 9 of your wife and son.
- 10 A Yes.
- 11 Q You showed that to The Italian Line doctor?
- 12 A Yes.
- 13 Q What did he do at the hospital?
- 14 MR. KAPLOW: If you wish a copy for identi-
- 15 fication, you may.
- MR. STUHLMAN: Yes.
- 17 O Go ahead.
- 18 A When we got up to the hospital, undoubtedly,
- 19 I don't know whether Dr. Berry got through to the ship
- in the meantime. Because I told you when I left there
- 21 he was trying to get the police to get through.
- But when we got up to the hospital in Falmouth
- 23 my son was outside in the ambulance ready to go to the
- 24 ship.
- Dr. Berry had him already in the ambulance.
 161a

- 2 My wife, they were wheeling my wife out, just starting
- to wheel her out of the ladies' section. And this doctor
- 4 from The Italian Line got there, he got in the ambulance,
- never examined my son.
- He came within a few feet of my wife, never
- examined her and then he was telling Dr. Berry, "I can't
- g take them."
- Q Couldn't take them.
- You understood he couldn't take them back on
- 11 the ship?
- 12 A He couldn't take any of us.
- 13 Q That was your understanding as to what he
- 14 said?
- A Right. Then my wife started to cry because
- that was the first indication she had that we weren't
- being allowed to go on the ship.
- 18 Q When did you leave the Port of New York
- on the vessel, when did your cruise start, can you
- 20 recall?
- 21 A December 20th.
- Q When was your cruise due to end at New York?
- I presume it was New York.
- 24 A Friday, January 2nd.
- This was on Tuesday. This was our last

- 2 port of call.
- Then what happened, he said they couldn't
- 4 take them on the ship?
- A Yes.
- 6 Ω What did you do?
- A He said, "You better come back with me to
- 8 get your luggage." So I had to ride back with him, he
- 9 left with the nurse and myself, and we went back to the
- 10 dock.
- They dumped the luggage in my lap at the
- 12 dock and literally dumped it because at that time,
- 13 after all my injuries and bleeding, I was about to pass
- 14 out.
- And I sat right at the dock on the grips and
- 16 I said, "Somebody get me a glass of water. I am about
- 17 to pass out."
- Finally, at least somebody offered something.
 - 19 Q This was on the dock.
 - Who of the ship's personnel were present
 - 21 at this time, if you know?
 - 22 A Some of the crew members.
 - 23 Q You don't know who they were?
 - 24 A No.
 - 25 Q You don't know their jobs?

1		Metzger 51
2	A	No.
3	Q	Were they wearing any special uniform or
4	any way you	could identify them?
5	A	The captain was not there.
6	Q	Any ship's officers?
7	A	No.
8	Q	What about the ship's doctor, did he stay
9	at Falmouth	Hospital?
10	Α	No.
11	Q	Where did he go?
12	A	Back on to the ship.
13	Q	He came back to the dock with you?
14	A	Yes.
15	Q	Did you go from the dock to the ship and
16	pack?	
17	A	No, they had my luggage dumped on the pier.
18	. Q	It was all packed?
19	A	I wouldn't call it packed. They had suits
20	dumped into	suitcases.
21	Q	It was placed on the pier?
22	A	Yes.
23	Q	The doctor said goodbye to you, did he?
24	Did he go	back to the ship?
25	A	Yes.

2 A Yes.

- 3 Q When was this transfer made from Falmouth
- to Montego Bay?
- 5 A In the meantime my wife and son had been
- 6 sent over to Montego Bay.
- 7 Q After The Italian Line doctor saw your wife
- 8 and son in or being readied for an ambulance?
- 9 A Right.
- 10 Q Which was outside Falmouth Hospital, is
- 11 that right?
- 12 A Yes.
- 13 Q In that interim of time, your wife and son
- 14 were transferred to St. James Hospital.
- 15 A They were about to go. My son was in the
- 16 ambulance, as I testified.
- 17 Q They were about to go to St. James Hospital?
- 18 A Because that supposedly was a better
- 19 hospital with facilities. This was more of a day dispensary.
- 20 It wasn't a place to leave someone.
- 21 Q When you first went back to Falmouth with
- the ship's doctor, your wife and son were about to be
- 23 transferred to St. James?
- A No, they were about to be sent to the ship.
- 25 That doctor had every indication of sending them to 166a

1		Metzger 55
2	` A	He locked it up.
3	Q	What did you do at St. James Hospital?
4	A	We were hospitalized.
5	Q	Did you become a bed patient?
6	A	Yes, all three of us were bed patients.
7	Q	What size hospital was this?
8	A	I also want to mention that the Italian
9	doctor said	we were better off staying in Jamaica,
10	that was hi	s reason for not taking us.
11	Q	Did he tell you this?
12	A	Yes.
13	Q	What size hospital was St. James?
14	A	It's not a hospital by our standards.
15	Q	Can you give me some idea, three stories or
16	one story	or five rooms?
17	A	I would say it's two stories with a walk
18	up. There	are no elevators in there. It has a men's
19	wing, and	a ladies' wing on both floors which are wards.
20	Q	Right.
21	A	In the center up on top there are five
22	private ro	oms or what are called by them private rooms
23	where ther	e they are completely open, anyone can wall
24	in and out	as the case may be.
25	Q	How long did you and your family stay in 168a

- 2 St. James Hospital?
- 3 A We were there a week. All three of us in
- 4 bed.
- Well, until we could get out of there. We
- 6 would have been able to go sooner but we couldn't make
- 7 arrangements to get out.
- 8 Q You stayed there because of travel arrange-
- 9 ments?
- 10 A Because we couldn't get anything.
- 11 Q So you all stayed there as inpatients for
- 12 about a week?
- 13 A That's right. We wanted to get out and
- 14 this Mr. Fletcher could get us out about two weeks
- 15 later which certainly was most undesirable because the
- 16 way the conditions were there, after I was there a day
- 17 or two, I had no pillow at all.
- 18 My sheets and my wife's, as you will find
- 19 out, were never changed. It was a most intolerable
- 20 situation. My wife's cast was put on and this is what
- 21 I want to mention.
- The accident happened on Tuesday. Wednesday
- 23 was a holiday in Jamaica so nothing happened. On Thursday
- 24 they X-rayed and they carried her down on a mattress a

Met	zger	
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- 2 flight of stairs to the X-ray room, carried her back up
- 3 and if you know what it is with a broken leg to be
- 4 carried up and down on a mattress -- that was on
- 5 Thursday.
- 6 On Friday, the leg was set. The same day I
- 7 would have been back in New York. And after they set
- 8 the leg on that Friday, the bed was wet from the back
- 9 of the cast.
- 10 When we got her back here the following
- 11 Tuesday, as I told you we got in Tuesday morning, it was
- 12 still wet and in our hospital they couldn't believe it.
- 13 They had never seen anything like that in
- 14 their lives.
- 15 Q What do you mean by that?
- 16 A They had never seen a wet cast that did
- 17 not dry. They couldn't believe it was set three or
- 18 four days earlier.
- I was fortunate to get out of Jamaica only
- 20 through the efforts of the U.S. Consul.
- 21 Q You flew back by Air Jamaica, is that
- 22 right?
- 23 A That's right.
- 24 Q Do you remember the date you flew out?
- 25 A On Saturday, January 3rd, the Consul made

_	-	-	•	•	_

	1		Metzger 58
	2	arrangements	for me to fly Monday, January 5th, at
	3	5:30 at night	. The airline called me an hour before
	4	that we could	in't get on that flight because they
	5	didn't have	the proper equipment for a stretcher case.
	6		Eventually we got on a plane somewhere
Paris	7	around eleve	n o'clock at night or go knows hour.
	8		MR. KAPLOW: January 5th at eleven o'clock?
	9	A	It was some later hour than 5:30.
	10	Q	What time did you arrive in New York?
	11	A	We got in at two o'clock in the morning?
	12	Q	What date?
	13	A	January 6th.
	14	Q	What did you do with your wife and child?
	15	A	I had to take my wife directly to the
	16	hospital.	
	17	Q	What hospital?
	18	A	Passaic General Hospital.
	19	Q	How long was she there?
	20		MR. KAPLOW: Until February 8, 1970.
	21		MR. STUHLMAN: 1970?
	22		MR. KAPLOW: Yes.
	23	Q	Do you know her injuries?
	24	A	Her leg had to be set all over again.
	25	Q	What were your injuried, do you know offhand?

1		Metz	ger	58 A
2	A 1	Broken right fe	mur.	
3	Q	Any other injur	ies, serious?	
4	A	She can describ	e that better than	I can.
5	Q	What about your	son, what about h	is injuries
6	what did you	do with him wh	en you arrived in	New York?
7	A	My son had exte	ensive stitching.	
8		MR. KAPLOW: A	ll he asked is what	did you
9	do wit	th your son when	n you arrived in Ne	w York,
10	that i	s the only thin	ng he asked you, di	d you take
11	him ho	ome?		
12	A	I took him hom	e.	
13	Q	Did he get any	further hospitaliz	ation?
14	A	Yes.		
15	Q	Where?		
16	A	In Passaic.		
17	Q	General Passai	.c?	
18	A	Passaic Genera	1 Hospital.	
19	Q	When did you t	take him to that ho	spital?
20		MR. KAPLOW:	You mean for the f	irst time?
21		MR. STUHLMAN:	For the first tim	e.
22	A	He went there	January 15th until	January
23	22nd.			
24	Q	To the what?		
25	A	To the 22nd.	L72a	

1	Metzger 59
2	Q He was an inpatient?
3	A Right.
4	Q What were his injuries?
5	A He wasn't in for the injuries. This was
6	for a urinary problem as a result of what was done in
7	Jamaica.
8	Q What were his injuries initially, do
9	you know?
10	A Yes, severe facial injuries. He had over
11	50 stitches. It covered the eyelid, all over his face.
12	Nct all of his face. The right side of the face. And
13	his hand was severely cut.
14	Q Which hand? You probably know more about
15	his injuries than he does.
16	Q I think it was his left hand.
17	MR. KAPLOW: It was his right hand.
18	A He had over 50 stitches down there. If it
19	had been handled here it would have been three times
20	as much and I wouldn't have the residue that we have
21	now.
22	Q What other injuries did he have, to your
23	knowledge.
24	MR. KAPLOW: His wrist, his face, his
25	forehead, his head, his scalp.

1	Metzger 60
2	A The head was all through here the way it
3	was all stitched.
4	Q Did he have any fractures?
5	A No.
6	Q Has he been treated since he came out of
7	the Passaic General Hospital?
8	A Yes, he is still being treated.
9	MR. STUHLMAN: Read the last answer.
10	(Record read.)
11	Q Since he came out of Passaic General?
12	A He has been in three times.
13	Q He came out on January 22nd.
14	Did he go back?
15	A He went back on February 10th. He was
16	there until February 12th. Then he was subsequently
17	hospitalized. I don't have the dates.
18	MR. KAPLOW: It was in May.
19	Q Where?
20	A Same hospital, for plastic work.
21	MR. KAPLOW: May 27th to May 30th.
22	Q Has most of his treatment consisted of
23	plastic surgery, as far as you know?
24	MR. KAPLOW: No.
25	MR. STUHLMAN: What is the treatment
	174a

1	Metzger	1
2	generally consisting of?	
2	MR. KAPLOW: Urinary plus the plastic	
4	surgery. Urological problems as well as pla	stic
5	surgery.	
6	MR. STUHLMAN: What are the urological	
7	problems.	
8	Are you relating that to the automobil	le
9	accident?	
10	MR. KAPLOW: Yes.	
11	BY MR. STUHLMAN:	
12	Q What treatment outside of Passaic Gen	eral
13	Hospital has your son had? And other clinic or	hospital
14	A He has been treated by Dr. DeBell.	
15	Q This is in his office?	
16	A Yes.	
17	Q What other hospital or clinic treatme	nt has
18	he had, any outside of Passaic General?	
19	A Well, the treatment when you go to	the
20	urologist, there is treatment there that is not i	n the
21	hospital.	
22	Q That is my next question.	
23	He has had no hospital or clinic or	
24	institutional treatment except for Passaic General	al,
25	in that wight?	

He has been hospitalized three times. 175a

A

Had your son completed treatment or is he

176a

25

Metzger

2		baina	treated?
	STILL	pernd	riearen!

- 3 A He is still under the care of Dr. Fadil and
- Dr. DeBell.
- 5 Q Would you tell me, sir, any expenses that
- 6 you have had out of pocket for hospitals and/or doctors,
- 7 medicines and transportation, any other expenses that
- 8 you had had caused by or related to your accident in
- 9 Jamaica.
- We can start with the medical or we can
- 11 leave it and fill it in.
- MR. KAPLOW: Leave a space.
- MR. STUHLMAN: I want doctors' bills to
- 14 date, I want hospit 1 bills to date, I want
- medical bills to date that you are paying out
- of pocket and I want travel expenses if you claim
- 17 that they are related.
- When I say doctors', medical bills, I
- want all bills and all expenses you are indebted
- to pay, required to pay for either Jamaica or here
- in the States including individual doctors.
- 22 And eventually, I would like copies of those.
- 23 Q I want to know any other expenses including
- 24 travel, whatever you claim is related to the injury
- for which you are suing, of any nature, and I would like 177a

1	Metzger 64
2	them itemized in exact dollars.
3	A Yes.
4	Q And copies, of course, of the bills wherever
5	available.
6	A Yes.
. S. 7	Dec p 68.
8	· · · · · · · · · · · · · · · · · · ·
9	
10	
11	
12	
13	Q Were you, Mr. Metzger, reimbursed for
14	any of your expense monies for this particular cruise
15	by Italian Line?
16	MR. KAPLOW: A portion of the expense of
17	the ticket, the passenger ticket.
18	A You got that but they refused to give it
19	to me.
20	MR. KAPLOW: Through my effort.
21	A I got dumped off the boat and they wouldn't
22	give me a nickel.
23	MR. STUHLMAN: This is objectionable.
24	Off the record.
25	(Off the record discussion.)

- 2 A I received reimbursement of \$318.00 ticket
- 3 passage moneis prorated.
- 4 0 When you first hired or did business with
- 5 Mr. Johnson, the taxi driver, you say it was near
- 6 a booth, a tourist booth?
- 7 A Not a booth, a Jamaican tourist officer.
- This is a government office as far as you
 - 9 know?
 - 10 A Yes.
 - 11 Q There was no Italian Line agent there?
 - MR. KAPLOW: I object to the form.
 - 13 I would say there wasn't any. But I wouldn't know.
 - 14 Q The question is, did you say any, did you
 - 15 talk to any?
 - 16 A No.
 - 17 Q Are you making any claim for other than
 - 18 your injuries and the injury of your child? In other
 - 19 words, plus expenses.
 - What I am driving at, are you saying you lost
 - 21 any earnings or any income as a result of this accident?
 - MR. KAPLOW: In view of the fact that the
 - 23 loss of earnings period involves the legal issues of
 - 24 colateral source, the answer to this question will be
 - 25 taken under advisement by counsel.

1		Metzger 66
2	Q	Did you lose any time from work?
3	A	Yes.
4	Q	How much?
5	A	Approximately three months.
6	Q	When was the cruise over?
7	A	When did the cruise end?
8	Q	When was it supposed to end?
9	A	It was supposed to end on that Friday,
10	the Friday	we got back to New York, January 2nd.
11	Q	It was supposed to end on January 2nd?
12	A	Yes.
13	Q	So that you wouldn't have gone when
14	were you d	ue back at work?
15	A	That following day.
16	Q	Which would have been the cruise was over
17	on the 2nd	?
18	A	Yes.
19	Q	Friday, January 2nd?
20	A	Yes.
21	Q	You were due back on January 5th?
22	A	Yes.
23	Q	That was vacation time up until then?
24	A	Yes.
25	Q	Which statement which you handed me
		180a

1		Metzger	67
2		MR. KAPLOW: Off the record.	
3		(Off the record discussion.)	
4	Q	When did you go back to work, do you	
5	remember?		
6	A	I went back on March 2nd.	
7	Q	March 2nd?	
8	A	Yes. I didn't work full time.	
9	Q	You went home what, early each day?	
10	A	Yes.	
11	Q	Four o'clock?	
12	A	Until May 15th.	
13	Q	Were you out of work from January 5t	:h
14	until March	2nd due to your injuries?	
15	A	Right.	
16	Q	Were you paid for that period of tir	ne?
17	A	Yes.	
18		MR. KAPLOW: This is a legal matter	. I
19	will	permit the fact as stated by the pla	intiff
20	to st	ay on the record.	
21		However, the conclusions to be draw	n
22	there	efrom are a legal matter.	
23	Q	Are there any other sources or area	s of
24	expense th	at I have not asked you, medical, tra	vel,
25	room and be	oard for which you are claiming?	

68 1 In other words, I am giving you an 2 opportunity to put it down on the record at the time 3 when you get the deposition and we will leave a page in this for that or you can insert a page. Are there any other areas for which you 6 will claim money damages, liquidated damages other than pain and suffering? MR. KAPLOW: Leave a space and we will 9 10 fill it in. MR. STUHLMAN: You can't even tell me 11 12 the areas yet? 13 KAPLOW: No. MR. STUHLMAN: At least I asked. 14 Tountilf - Medical, Maril + Lon of Shermi 15 16 17 20018 What is your Social Security number? 19 Q 20 119-12-2405. A Have you ever served in the armed forces? 21

22 No.

Did you have any disability which prevented 23

you from serving in the armed forces? 24

25 Yes.

1	Metzger 70
2	drivers or owners of the two vehicles and the truck
3	involved in the collision?
4	MR. KAPLOW: It is alleged that
5	MR. STUHLMAN: Who alleged it?
6	MR. KAPLOW: What?
7	MR. STUHLMAN: You mean you have been told
8	A I have been informed that the Fargo truck
9	which was the truck in collision with the vehicle in
10	which I was the passenger along with my wife and my
11	child bore license No. AS453 was owned by Noel
12	Oakley and operated by Felix Oakley.
13	That the one vehicle that was in the same
14	lane as we were operating in, the Morris car was license
15	BP163, was owned by C. Name and operated by Kenneth
16	Green.
17	That the other vehicle in the same lane
18	that we were was a Volkswagen license No. AV374 owned
19	by Stanley Sinclair and operated by Stanley Sinclair.
20	Q Do you know the owner and driver of the
21	vehicle which took you to the hospital?
22	A No, I do not.
23	Q Do you know whether there were any police
24	at the scene of the accident?
25	A Not at the time we were at the accident scene.

Do you have it in your possession?

1	Metzger 75
2	Q You are shaking your head no.
3	Did you ever take or make note of the license
4	plates of any of the cars involved in the accident including
5	the one in which you rode?
6	A I made a note of what the driver told me his
7	number was.
8	Q Did you ever see it on a piece of paper or
9	on a plate?
10	A No.
11	Q Where is the note?
12	MR. STUHLMAN: Plaintiff has produced a piece
13	of paper which he
14	Q Is this your handwriting?
15	A Yes.
16	Q Are these notes you made some time in Jamaica?
17	A I may have added to that.
18	Q Do you know when you made the notes?
19	A Down in Jamaica.
20	Q You don't know just when?
21	A No.
22	Q At the top there appears the number Y-7990
23	
24	
25	I know I was in a Rambler car. I wouldn't have known

- 2 the license.
- 3 Q Is that what you then considered to be the
- 4 license number or the plate number?
- 5 A Yes.
- When I got this report is showed 7790.
- 7 Q Instead of 7990?
- 8 A Yes.
- 9 Q You are indicating this report, you are
- 10 indicating the police report?
- 11 A Yes.
- 12 Q You have the name Goodwin Johnson at the
- 13 bottom.
- 14 Is that who you understood to be the driver
- 15 of your car?
- 16 A As far as I know.
- 17 Q Under that you have a number, No. A508682.
- Do you remember what that number is?
- 19 A It was some document that he had in his
- 20 pocket that he showed me.
- 21 Q You mean Mr. Johnson?
- 22 A Yes.
- 23 Q Do you know whether it was a license, a
- 24 driver's license or not, registration, vehicle registration,
- 25 do you know?

- A I wasn't honestly sure when he showed it
- to me whether that was a driver's license or just what
- it was.
- O Do you remember what it looked like?
- A No, I don't remember.
- Q Did he tell you what it was?
- A He just pulled it out and showed it to me.
- Q Was this at the scene of the accident?
- 10 A That was at Falmouth Hospital.
- 11 Q Did he follow you?
- A He went in the same car, as I said before,
- 13 holding my son.
- 14 Q That is where you got most of this information?
- 15 A Yes.
- 16 Q Is this name of the insurance company, do
- you think that is what he told you his insurance company
- 18 was, or do you know?
- 19 A That was written on some paper that he
- 20 showed me.
- 21 Q The same paper that the number was on?
- 22 A No, I would say no.
- When I asked, he produced one or two papers.
- Q You don't know what Black Sea and Baltic
- 25 General Insurance Company, Ltd., means?

- 2 A No.
- I assume it's an insurance company.
- MR. KAPLOW: Off the record.
- (Off the record discussion.)
- 6 Q Then there is another name, Security subagent.
- A It was on some paper. Like an identifi-
- 8 cation paper he had.
- Q Under that is Security Guarantee Insurance
- 10 Company, Ltd. subagent, that was your information the
- 11 were the insurance people on his automobile?
- 12 A Right.
- 13 Q What is this written in pencil, 51 Duke
- 14 Street, Kingston?
- A I got the address off -- these were the
- 16 addresses of Security Guarantee that I secured from
- 17 phone books.
- 18 Q 41 Duke Street, Kingston, and 24 Queen
- 19 Street, Montego Bay?
- Yes.
- 21 Q These notes were made some time in Jamaica
- 22 but you are not sure just when?
- 23 A Probably at the Falmouth Hospital, right.
- 24 Q I see here, accident Tuesday, December 30,
- 25 1969, 1:15 p.m.

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car, were there other automobiles or vehicles in the

At the time you hired Mr. Johnson and his

2 area?

- 3 A There were: some, yes. His car was at
- 4 the end. But there were parked cars there. There
- 5 were private people.
- 6 Q I believe you testified that he approached
- you, is that correct, Mr. Johnson?
- 8 A Right.
- 9 Q What did he say?
- 10 A Well, he wanted to know where we wanted to
- 11 go. When I told him --
- 12 Q Did he say he had a taxi for hire or some-
- 13 thing like that? Do you remember what he said?
- 14 A No, but he approached me to have him take
- 15 me. He said, "My car is right here."
- 16 Q Then you bargained over the price, is that
- 17 correct?
- 18 A Yes.
- 19 Do you have the addresses of the Falmouth
- 20 Hospital and the St. James Hospital?
- 21 A I think it is sent to the town.
- 22 Q What is the Falmouth Hospital?
- 23 A Falmouth, Jamaica.
- 24 Q What would St. James be?
- 25 A Montege Bay, Jamaica.

80A

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2 RALPH METZGER, III, a plaintiff herein,
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- having been duly sworn by the Notary Public,
- 4 testified as follows:
- 5 EXAMINATION BY
- 6 MR. STUHLMAN:
- 7 Q Your full name?
- 8 A Ralph Metzger, III.
- 9 Q Your home address?
- 10 A 17 Vincent drive, Clifton, New York.
- 11 Q Ralph, you are the son of Ralph Metzger,
- 12 Jr.?
- 13 A Yes.
- 14 Q Your father who is in the room?
- 15 A Yes.
- 16 Q You were in an accident in Jamaica in
- 17 December 1969 with your mother and father?
- 18 A Yes.
- 19 Q You went to a couple of hospitals down there?
- 20 A Yes.
- 21 Q And you went to General Passaic Hospital
- 22 back up here?
- 23 A Yes.
- Q Will you tell me what part of you was
- 25 injured at the time of your accident, just tell me what

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was hurt, were you were hurt?
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- 3 A Immediately afterwards?
- 4 O Yes.
- 5 A My arm.
- 6 Q You are indicating your left arm?
- 7 A Yes, and my cheek, over my eyebrow. My
- eye and also a stitch on my nose.
- 9 Q Speak up.
- 10 A And I also had some cuts on my head.
- 11 Q In your head?
- 12 A Yes.
- 13 Q Any other injuries?
- 14 A Immediately after the accident, no. As
- 15 a result of the accident, yes.
- 16 Q What were they?
- 17 A I had a urinary problem.
- 18 Q Were you hurt at the time of the accident
- in your body?
- A I had many bruises.
- 21 Q Where did you have bruises?
- A All over. I don't know exactly where. But
- 23 I wasn't able to turn on my side at night it hurt so
- 24 much, amithen I wasn't able to walk.
- 25 Q Which side?

1		Metzger, III 83			
2	A	Both sides. I wasn't able to walk.			
3	Q For how long after the accident?				
4	A I don't know exactly. Around a day.				
5	Q A day or so after the accident?				
6	A Yes.				
7	Q	When did you first start having urinary			
8	problems?				
9	· A	Within a couple of weeks after the			
10	accident.				
11	Q	Tell me what they were.			
12	A	I wasn't able to go at all.			
13	Q	For how long?			
14	A	For a couple of days. I had gone to my			
15	doctor and	he told me to go to this urologist.			
16	Q	You went to a urologist whose name is what?			
17	A	Dr. Fadil.			
18	Q	The doctor who told you to go to him is			
19	Dr. DeBell?				
20	A	Yes.			
21	Q	What about Dr. Fadil, what treatment did			
22	he give you?				
23	A	He looked at me and he told me and he			
24	directed me	to go the hospital because he wanted to see			

25 what was the matter. He cystoscoped me and made some tests.

1		Metzger, III 85		
2	Q	Are those scars on your right wrist and arm,		
3	is that from the accident?			
4	A	Yes.		
5	Q	Were any bones broken?		
6	A	No.		
7.	Q	What is the last time you saw a doctor		
8	about your	rinary problem?		
9	A	I think it was a couple of months ago,		
10	last month.			
11	Q	To you have any present complaints or any-		
12	think wrong	at the present time?		
13	A	From this?		
14	Q	Yes.		
15	A	Not really, no.		
16	Q	Do you think you are pretty well straightened		
17	out?			
18	A	He has not discharged me.		
19	Q	He has not?		
20	A	No.		
21	Q	But as far as you are concerned, do you		
22	have any co	mplaints, anything wrong with you?		
23	A	Not that I could te 1.		
24	Q	Do you feel normal as far as that problem		
25	is concerne	d?		

1		Metzger, III 86			
2	A	Yes.			
3	Q	Do you have any pain anywere from part			
4	of the accident that relates to it?				
5	A	My skin is sensitive where my scars are.			
6	My a specifically, if I bang it I feel it.				
7	Q	You are indicating your right arm and			
8	right wrist?				
9	A	Yes.			
10	Q	Anything else?			
11	A	No.			
12	Q	How long were you out of school after this			
13	accident?				
14	A	Around a month.			
15	· Q	About a month?			
16	A	Yes.			
17		MR. STUHLMAN: That is all I have.			
18					
19		- , 7			
20					
21	Subscribed	and sworn to before me			
22	this 13	day of, 1977.			
23		Notary Public. State of New York No. 31-2034280			
24		Qualified in New York County Commission Expires March 30, 12_)			
25					

- 2 ADELE METZGER, a plaintiff herein,
- having been duly sworn by the Notary Public,
- 4 testified as follows:
- 5 EXAMINATION BY
- 6 MR. STUHLMAN:
- 7 Q Your full name?
- 8 A Adele Metzger.
- 9 Q Your home address?
- 10 A 17 Vincent Drive, Clifton, New Jersey.
- 11 Q You are married to Ralph Metzger, Jr.?
- 12 A Right.
- 13 Q And your son is Ralph Metzger, Jr., is that
- 14 correct?
- 15 A III.
- 16 Q Were you in Jamaica with your husband and
- 17 child in December, 1969?
- 18 A Yes.
- 19 Q You were involved in an automobile accident
- 20 down there?
- 21 A Right.
- Q You went to Falmouth Hospital after the
- 23 accident?
- 24 A Yes.
- 25 Q What were your injuries?

		A. Metzger	88
1	A	I had a broken leg.	
2	Q	Your right leg?	
3	A	My right femur.	
4	Q	Right.	
5	A	And many bruises, the major in	jury being
6			
7	the broke		Wasnital after
8	Q	Were you treated at St. James	nospical are
9	that?		
10	A	My leg was encased in a cast.	
11	Q	Where?	
12	A	It was supposedly set down in	St. James
13	Hospital	, Montego Bay.	
14	Q	Yes?	
15	A	But they encased it in a cast	•
16	Q	Did you come up here with a c	ast?
	A	I came up here with a cast th	at reached
17	from the	bottom of my foot completely up	to the waist.
18	I! was a	body cast completely of one piece	1.
19	Q	On the right side?	
20	A	On the right side.	
21		You flew up with your husband	and child,
22	Q		
23	is that		
24	A		
25	Q	Where did you go for treatme	rt when you

- arrived here?
- A Went directly to the Passaic General
- 4 Hospital.
- 5 Q Did they remove the cast?
- 6 A They X-rayed it first and ascertained that
- it had not been set and it needed surgery. So they
- 8 removed the cast and operated. And they inserted a plate
- and nine pins to hold the bone together.
- 10 Q Did they ever remove that plate or is that
- 11 still in there?
- 12 A It is still there.
- 13 Q As far as you know?
- 14 A Right, definitely.
- Q Were there any other treatments to any
- other parts of your body at Passaic General?
- 17 A No.
- 18 Q Who was your treating physician there?
- 19 A Dr. Marvin Rosenberg.
- 20 Q Have you had any treatment at any other
- 21 hsopital or clinics since you came out of Passaic General?
- 22 A No.
- 23 Q Have you had any treatment by any doctors other
- 24 than Dr. Rosenberg for your injuries?
- 25 A No.

- 2 leg?
- 3 A No.
- 4 Q How did you get out, in a wheel chair?
- 5 A I had a walker and I was able to step on
- 6 my left leg and hop using a walker.
- 7 Q How long did you use the walker?
- 8 A Well ---
- 9 Q When did you commence weight bearing?
- 10 A I would say about the middle of March I started
- being able to put some weight on the leg. It was many
 - 12 months afterwards before I could walk without the walker.
 - I have had to use a cane since I stopped
 - 14 using the walker.
 - 15 Q Do you know when you stopped using the walker?
 - 16 A I would judge some time toward the end of
 - 17 last summer.
 - 18 Q Last summer?
 - 19 A Yes.
 - 20 Q Have you been using the cane ever since?
 - 21 A Yes. I would say the beginning of July.
 - 22 I remember I was using a cane in July.
 - 23 Q Of 1970?
 - 24 A Beg pardon?
 - 25 O Of 1970?

the cane?

- 2 A Yes, but I find that I don't go around
- 3 the stores and do the shopping as I used to because
- 4 I find I get too tired. Just find that walking is
- 5 difficult.
- 6 Q Have you hired any help since your accident?
- 7 A Well, I have a woman that comes in the
- 8 house. I have had problems with help as I suppose
- 9 everybody has.
- 10 Q Did you have any help before the accident?
- 11' A Yes.
- 12 Q How often?
- 13 A Theoretically, you know, she is supposed
- 14 to come in maybe twice a week but you never know.
- 15 Q What about after your accident?
- 16 A I needed much more help and couldn't get
- 17 it. I had people, I had someone coming in when I
- 18 could get them.
- 19 Q How often after the accident did you have
- 20 people coming in to help?
- 21 A Well, when I could get them, about twice
- 22 a week.
- 23 Q Do you have someone now about twice a week?
- 24 A Yes.
- 25 Might I say, things didn't get done when

- 2 they didn't come in because I didn't do anything for
- 3 months after. I was unable to do anything. If they
- 4 didn't come in, it would sit.
- Q Can you tell me the cost of having somebody
- 6 more frequently because of your injury as compared to
- 7 the cost of having somebody prior to your injury twice
- 8 a week?
- In other words, is there a monetary difference?
- 10 A Yes.
- 11 Q For a period of time, may I ask you, did you
- 12 have someone in more often after your accident?
- 13 A I couldn't -- this was a bad time during
- 14 the winter and I couldn't get anyone to come in more
- 15 often. But I have raised the woman who used to work
- 16 for me, I doubled her salary in order to make it more
- 17 agreeable to her to come in.
- 18 Q Is she the same woman that you used prior
- 19 to your accident?
- 20 A Yes.
- 21 O What is her name?
- A Anna Grasky.
- 23 Q Do you know where she lives?
- 24 A In Brooklyn.
- 25 Q When did you double her salary?

- 2 A Maybe in February of '70. I would say about
- 3 February of '70.
- 4 Q She has been working for you previously and
- 5 since your injury?
- 6 A Right.
- 7 Q Mostly?
- 8 A Yes.
- 10 A Yes, definitely.
- 11 Q What is your address again?
- 12 A 17 Vincent Drive, Clifton.
- 13 Q Clifton?
- 14 A Yes.
- 15 Q Does this woman come from Brooklyn.
- 16 A Yes, we lived in Brooklyn at one time. She
- 17 worked for me there. That is how she happened to come
- 18 out.
- 19 Q How long have you lived in Clifton?
- 20 A It will be 10 years in September.
- 21 Q For how long a period did any women come
- more often that twice a week, can you estimate that?
- 23 A After the accident, my husband was unable
- 24 to get anyone to come in. My mother ame in to do
- 25 what she could and she tripped over a doorsill and

- she fractured her nose. She was not good to the family.

 And friends and neighbors and whoever would chip in.
- When Anna Grasky, when did she come back?
- She was sick for part of this period and for part of the time didn't come.
- When did she come back, when was she better,
- 8 do you remember, last spring some time?
- A She did come in the spring when she was
- 10 able to.

٠,

- 11 Q Do you have any present complaints? I am
- 12 sure you do. I want to know what they are.
- 13 A In reference to my leg?
- 14 Q Yes.
- 15 A Just recently I have started developing
- 16 more pain that I ever had because it seems the nerves
- which were severed had in one area, picking around the
- incision, have started to grow together. I have been
- 19 experiencing more pain. In my hip and femur, both.
- A lump has developed, in the leg and --
- 21 Q Where?
- 22 A In the femur and we suspected that possibly
- 23 the pins were working loose which I understand can
- 24 happen.
- But after X-rays, the doctor found there

know. Up until fairly recently I would say there
was always improvement. But I don't know if I reached

the plateau or things are going so slowly I don't

see the difference.

MR. STUHLMAN: Off the record.

(Off the record discussion.)

19 Q Do you know of the fact or the situation 20 concerning hiring of the automobile in which you were 21 injured?

A Beg pardon?

23 Q Do you know anything of the fact concerning 24 the hiring of the car or did your husband do it, the 25 car in which you were injured?

- 2 A I was with him. I overheard the conversation.
- 3 I was with him at the time that he hired the car.
- 4 Q Was there anyone from Italian Lines there
- s at the time?
- A At the moment we hired the car?
- Q Yes.
- A Not that I know of.
- Q Did this man approach him, the driver of the
- 10 car approach your husband?
- 11 A Yes, he did.
- 12 Q Do you remember what he said?
- 13 A He asked if we were interested in a cab and
- 14 were we interested in going and they made a deal as to
- 15 price.
- 16 Q Do you recall at the time being aware of any
- 17 markings or distinguishing features of any kind as
- 18 between what might have been private cars?
- 19 A No.
- 20 Q You have no recollection of seeing anything
- 21 different?
- 22 A No. They are not taxicabs in the form we
- 23 know them.
- 24 Q Did you see any taxicabs?
- MR. KAPLOW: I will object to your interrupting

	A. Metzger	99
1	the witness' answer.	
2	R. STUHLMAN: I don't mean to	interrupt.
3	Q Continue.	
4	A I forgot what I was saying.	
5	Q At the time, did you see anythin	ng that
	would make any of the vehicles in the area	look like
7	a taxi or public car for hire?	
	A No, there were many cars parked	on the street
9	I wasn't aware which were cabs or which wer	e private car
11	I know what I started to say be	fore. The
12	taxis don't look like taxis with lights on	them or any
13	sort of writing on the door as we often see	the cabs
14	around here. We would know it was a taxio	
	way it's painted.	
1.5	They are just painted the color	of any car
16	can be painted.	
17	Q The car you hired was one of the	hose?
18	A Yes, it was looking like a pri	vate car.
20	Q How often have you been treate	d by Dr.
	Rosenberg in the last year, what is the fr	equency?
21	A Six months. I had an appointm	

February but I had to go back. I was due for a six month's appointment at this point. But I had to go back because of this lump and pain that I have.

22

23

24

25

215a

1	A. Metzger 100A
2	I have that?
3	A 125-22-7549.
4	MR. STUHLMAN: That is all I have.
5	MR. KAPLOW: No question.
6	
7	
8	
9	Subscribed and sworn to before me
10	this 13 day of April, 1973.
11	
12	HERBERT J. KAPLOW Notary Public. State of New York No. 31-2034280 Qualified in New York County Commission Expires March 30, 197
13	Commission Expires March 30, 194
14	
15	
16	
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19	
20	
21	
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23	

1	
2	CERTIFICATE
3	STATE OF NEW YORK)) ss.
4	COUNTY OF NEW YORK)
5	
6	I, EDWARD SHULMAN, a Notary Public
7	within and for the State of New York, do
8	hereby certify:
9	That RALPH METZGER, JR., ADELE METZGER
10	and RALPH METZGER, III, the witnesses whose
11	depositions are hereinbefore set forth, were
12	duly sworn by me and that such depositions
13	are a true record of the testimony given by
14	such witnesses.
15	I further certify that I am not related
16	to any of the parties to this action by blood
17	or marriage: and that I am in no way interested
18	in the outcome of this matter.
19	IN WITNESS WHEREOF, I have hereunto set
20	my hand this The day of feed, 1971.
21	
22	0. 11/1
23	EDWARD SHULMAN
	BUREAU SHOWER

217a

STATE OF NEW YORK COUNTY OF NEW YORK

DAVID BARRY being duly sworn deposes and says: On August see, 197 I served the within record on appeal brief appendix on Kirlin Campbell & Keating the attorneys for the appelled respondent by leaving mailing three copies thereof * bis office located at 120 Broadway new york, new york 10005

Sworn to before me

this grad day of august. 1975

ureoa THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976